CALIFORNIA COASTAL COMMISSION
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Appeal Filed:	April 10, 2001
Substantial Issue:	May 9, 2001
Staff:	JRR/MPD/CLK-SF
Staff Report:	August 27, 2001
Hearing Date:	September 14, 2001

APPEAL STAFF REPORT
DE NOVO REVIEW

APPEAL NO.: A-2-HMB-01-011

APPLICANT: Keenan Land Company

LOCAL GOVERNMENT: City of Half Moon Bay

AGENT: William Crowell
Anne Mudge

SUBSTANTIAL ISSUE: The Commission found that the appeal of the local government action on this project raised a substantial issue on May 9, 2001

PROJECT LOCATION: Beachwood Subdivision at the intersection of the proposed Bay View Avenue and Highway One between Terrace and Grand View Avenues, inland of Highway One, Half Moon Bay, San Mateo County.

PROJECT DESCRIPTION FOR DE NOVO REVIEW: The proposed development consists of the subdivision of a 24.7-acre parcel into 77 residential lots, including grading and utilities. The residential lots would range from approx. 7,500-16,000 sq. feet in area and are designated for single-family home use. The project includes four additional lots (totaling 3 acres in area) for open space, conservation, and park and recreation purposes

APPELLANTS: Commissioners Sara Wan and Christina L. Desser
Mr. Michael Ferreira and Mr. Patrick O'Brien

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1.0 Executive Summary

On May 9, 2001, the Commission found that the appeals submitted regarding this proposed project raised a substantial issue with respect to the grounds on which they were filed. The Commission then opened and continued the de novo portion of the appeal hearing to the September 2001 meeting to allow staff additional time to prepare a recommendation for Commission action.

The staff recommends that the Commission approve the permit application with Special Conditions needed to offset the significant adverse impacts of the proposed development on wetlands, shoreline public access and recreation caused by increased traffic, environmentally sensitive habitat areas, water quality, and visual resources.

Wetland impacts

One of the most significant issues raised by the project is its effects on wetlands as defined under the City of Half Moon Bay's Local Coastal Program. The applicant asserts, and Commission staff agrees, that LCP-defined wetlands exist in the southeast corner of the site. Accordingly, the applicant proposes to dedicate this area to a public agency for open space and habitat protection purposes.

On the majority of the site, however, the extent of wetlands that meet the LCP definition of wetland has been disputed. The applicant asserts that wetlands meeting the LCP definition do not exist on the site, outside the southeast corner noted above. On the other hand, the City of Half Moon Bay's consultants have concluded that significant portions of the site contain hydric soils, in addition to hydrophytic vegetation, and therefore substantial portions of the site are appropriately delineated as wetlands and/or wetland buffers. Based on this conclusion, the City denied the project in March, 1999. Subsequently, the Superior Court for the County of San Mateo ordered the City to approve the project, based in part on a determination that the evidence before it did not support a conclusion that the areas in dispute contained hydric soils. The court concluded that the areas in dispute were not wetlands under the LCP definition.

The Court's ruling is not final, however, and the Commission has considered additional evidence regarding potential wetlands that was not before the court at the time it rendered its decision. This additional evidence, together with a re-analysis of all data in the record concerning potential wetlands, lead Commission staff to conclude that the bulk of the property consists of wetlands and/or wetland buffers. Consequently, all but approximately 19 of the proposed 77 residential lots would be inconsistent with LCP policies protecting wetlands and buffer areas against incompatible uses, such as construction of homes and roads.

The new data and re-analysis of data include the following:

- The observed ponding on the site, which was discounted by the applicant based on an assertion that rainfall totals at the time were extraordinary, in fact is strong evidence of wetland hydrology. Evidence in the record shows that rainfall totals at the time of observations were well within the realm of "normal" rainfall for the time and place.
- The ponding that was observed is evidence not only of wetland hydrology, but also of the presence of hydric soils. Such soils are defined in some circumstances by the length of time that water stands on the site.

- The Commission's chief biologist has reviewed the evidence and data sheets compiled by the applicant's and the City's consultants and has conducted a site inspection with the applicant's biologist. The Commission's biologist concludes that the preponderance of evidence strongly indicates that significant areas of the site with a prevalence of wetland vegetation are in fact wetlands both in an ecological sense and under the definition of the City of Half Moon Bay's certified Local Coastal Program.
- The "vernally wet" exception to the City's wetland definition, which played a part in previous decision-making regarding the extent of wetlands on the site, is not relevant. This exception, which has been subject to dispute, due to uncertainty concerning its precise meaning, excludes from wetland definition "vernally wet areas where the soils are not hydric". Because new evidence and re-analysis of existing evidence in the record support a conclusion that soils found on numerous parts of the site are indeed hydric and that the site contains seasonal wetlands and not vernally wet areas, this exception is no longer at issue.

Based on this analysis, Commission staff recommends approval of the project with conditions designed to restrict residential development to the western portion of the property, adjacent to Highway One. The remainder of the property, where some 58 residential parcels are proposed to be created would remain in open space, under the conditions recommended by staff. Specifically, Special Condition #1 would require elimination of approximately 58 lots and corresponding roads and infrastructure improvements proposed to be created within LCP-defined wetlands as well as a 100-foot buffer surrounding such wetlands.

Special Condition #1 provides the applicant with two alternative ways to achieve the required elimination of wetland and wetland buffer lots. One way would be to submit to the Executive Director a revised tract map, based on that approved by the City of Half Moon Bay and the origin of this appeal, maintaining the non-wetland parcels as currently proposed to be configured, while showing elimination of the remaining proposed lots and improvements in wetland and associated buffer areas. The second way would be to submit a wholly new tract map, for Commission review, locating proposed residential lots wherever wetlands or buffers would be avoided.

Staff notes that another alternative, not recommended here, would have been denial of the project entirely based on inconsistency with LCP policies that require protection of wetlands. Instead, staff has recommended conditional approval, designed to afford the applicant with a reasonable, although reduced, residential project.

Shoreline public access/traffic

The project would create additional residential parcels in an area with a large number of vacant undeveloped residential parcels, where existing traffic congestion on Highways 1 and 92 is severe (Level of Service F during both peak recreational and rush hour periods). Although the applicant proposes to contribute all or a portion of the costs of any traffic signal at the intersection of Highway 1 and the proposed Bayview Drive at a future time and would contribute a local traffic mitigation fee to the City (approximately $1,900/lot), the contribution of this project along with others likely to occur over the next 10 to 20 years in the San Mateo County Mid-Coast area would further exacerbate highway congestion. The result would be to significantly and adversely affect the ability of the general public to reach the shoreline for recreational purposes.

Although improvements to both Highway 1 and Highway 92 are proposed by the City of Half Moon Bay within City limits, those improvements would be insufficient to assure satisfactory service levels for the region in the future, given projected future growth. Furthermore, even with maximum investment in the transportation system, traffic volumes on both highways are predicted to be far in excess of capacity, if residential and commercial development proceeds as projected.

Up to 2,529 vacant residential lots already exist within the City of Half Moon Bay. Approval of the creation of additional residential lots through this proposed subdivision, which represents a net increase of 76 parcels (as proposed), and 19 parcels (as conditioned), would only contribute to a long-term worsening of traffic congestion and a consequent limitation on the ability of the general public to reach area beaches and shoreline for priority visitor-serving and recreational purposes, inconsistent with the provisions of the certified LCP. Accordingly, the Commission could deny the proposed project as it is inconsistent with the provisions of the certified LCP.

As an alternative to denial and to offset the adverse cumulative impacts of the development on public access to the shoreline, the staff recommends that the Commission apply a Special Condition that would require the applicant to retire the development rights of existing legal lots in the region on a one-for-one basis for any new lots created consistent with the above-referenced revision of the project to protect wetlands.

Protection of environmentally sensitive habitats

The U. S. Fish and Wildlife Service noted that the project site could provide habitat for California red-legged frogs and San Francisco garter snakes, both federally listed species. The applicant asserts that the site does not contain suitable habitat for these species. In any event, the most likely sites for these species are in the southeast corner already proposed by the applicant for protection. Additional protection is afforded these species by the recommended conditions, as described above, that would require elimination of proposed residential development on the central and eastern portions of the site for wetland protection purposes.

Other issues

Staff recommends Special Conditions to address:

- The potential for site-specific traffic impacts, reflecting agreements made between the City and the applicant regarding traffic congestion reduction measures,
- Water quality measures to protect against erosion from site grading and polluted runoff, and
- Protection of the visual quality of the project area, through elimination of the proposed sound wall along the site's Highway 1 frontage.

Staff notes that the report is organized such that each topic contains its own issue summary and conclusion (see the Table of Contents), in addition to a more detailed analysis of each topic.

2.0 Staff Recommendation

The staff recommends that the Commission approve Coastal Development Permit Application A-2-HMB-01-011, subject to conditions, as follows:

Motion:

I move that the Commission approve Coastal Development Permit No. A-2-HMB-01-011, subject to conditions pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve the Permit

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

2.1 Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

2.2 Special Conditions

1. Revised Subdivision Plan

A. Prior to issuance of the coastal development permit, the applicant shall submit**, for the review and approval of the Commission**, a revised Tract Map approved by the City of Half Moon Bay which reflects the following restrictions:

1. No development, as defined in both the Coastal Act and the certified Half Moon Bay Land Use Plan, including subdivision, shall occur within 100 feet of the wetlands identified as Areas W1-W17 as generally depicted on Exhibits 6 and 7.
2. The sound wall along the Highway 1 property boundary shall be eliminated from the project.
3. The map shall reflect only the number of lots that can be accommodated without encroaching within 100 feet of any wetland as defined by the certified LCP. No new lots shall be created unless the applicant submits evidence, for the review and approval of the Commission, that newly proposed lots will be served by road access that will not encroach within 100 feet of any wetland as defined by the certified LCP.

B. As an alternative to the requirements identified in subsection A above, and **subject to the review and approval of the Executive Director**, the applicant shall submit a revised Tract Map approved by the City of Half Moon Bay which reflects the following restrictions:

1. No development, as defined in both the Coastal Act and the certified Half Moon Bay Land Use Plan, including subdivision, shall occur within 100 feet of the wetlands identified as Areas W1-W17 as generally depicted on Exhibits 6 and 7.
2. The sound wall along the Highway 1 property boundary shall be eliminated from the project.
3. The map shall only reflect the following lots as proposed on the subdivision plan for which the entirety of the proposed lot is more than 100 feet from any of the wetlands identified as Areas W1-W17 and generally depicted on Exhibits 6 and 7: Proposed lots 1-12 and proposed lots 22-28. In addition, one of the most eastern of these lots shall include the balance of the property, including the wetland and wetland buffer area required to be restricted pursuant to Special Condition 2.

C. Under either of the alternatives identified in subsection A or B above, the applicant shall undertake development in accordance with the tract map approved by the Commission or Executive Director as required by subsection A or B. No proposed changes to the approved map shall occur without a Commission amendment to this coastal development permit.

2. <u>Deed Restriction for Wetland Protection</u>

A. No development, as defined in both the Coastal Act and the certified Half Moon Bay Land Use Plan, including subdivision, shall occur in or within 100 feet of the wetlands identified as Areas W1-W17 as generally depicted on Exhibit 7 except for development necessary for wetland or other habitat protection, if approved by the Commission as an amendment to this coastal development permit.

B. Prior to issuance of the coastal development permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, reflecting the above restrictions on development within 100 feet of the wetlands identified as Areas W1-W17 as generally depicted on Exhibit 7. The deed restriction shall include legal descriptions of both the applicant's entire property and the easement area. The deed restriction shall run with the land, binding all successors and assigns, and

shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3. Cumulative Public Access Impact Mitigation

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit evidence, for the review and approval of the Executive Director, that the development rights have been permanently extinguished on the number of existing legal lots equal to the number of lots to be created consistent with Special Condition 1 such that the subdivision of property authorized herein shall not result in a net increase of existing legal lots for residential development within that geographical area. The lots shall be extinguished only in the Mid-Coast Region of San Mateo County, an area that is generally depicted on Exhibit 22 and that is primarily served by the segment of Highway 1 between its intersection with Highway 92 and Devil's Slide and/or by the segment of Highway 92 west of Highway 280. Each mitigation lot shall be an existing legal lot or combination of contiguous lots in common ownership and shall be zoned to allow development of a detached single-family residence. The legality of each mitigation lot shall be demonstrated by the issuance of a Certificate of Compliance by the City or County consistent with the applicable standards of the certified LCP and other applicable law.

B. For each development right extinguished in satisfaction of subdivision A of this permit condition, the applicant shall, prior to issuance of the coastal development permit execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an open space or scenic easement to preserve the open space and scenic values present on the property that is the source of the development right being extinguished and to prevent the significant adverse cumulative impact to public access to the coast that would result as a consequence of development of the property for residential use. Such easement shall include a legal description of the entire property that is the source of the development right being extinguished. The recorded document shall also reflect that development in the easement area is restricted as set forth in this permit condition. Each offer shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assigns, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

C. For each development right extinguished in satisfaction of subdivision A of this permit condition, the applicant shall, prior to issuance of the coastal development permit, also execute and record a deed restriction, in a form and content acceptable to the Executive Director, requiring the applicant to combine the property that is the source of the development right being extinguished with an adjacent already developed lot or with an adjacent lot that could demonstrably be developed consistent with the applicable certified local coastal program. The deed restriction shall include legal descriptions of all combined and individual lots affected by the deed restriction. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the

enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

D. As an alternative to the method described in subsection B and C above, the applicant may instead, prior to issuance of the coastal development permit, purchase existing legal lots that satisfy the criteria in subsection A above and, subject to the review and approval of the Executive Director, dedicate such lots in fee to a public or private land management agency approved by the Executive Director for permanent public recreational or natural resource conservation purposes.

4. Erosion Controls

A. Prior to issuance of the coastal development permit, the applicants shall provide, for the review and approval of the Executive Director, an Erosion Control Plan to reduce erosion and, to the maximum extent practicable, retain sediment on-site during and after construction. The plan shall be designed to minimize the potential sources of sediment, control the amount of runoff and its ability to carry sediment by diverting incoming flows and impeding internally generated flows, and retain sediment that is picked up on the project site through the use of sediment-capturing devices. The plan shall also limit application, generation, and migration of toxic substances, ensure the proper storage and disposal of toxic materials, apply nutrients at rates necessary to establish and maintain vegetation without causing significant nutrient runoff to surface waters. The Erosion Control Plan shall incorporate the Best Management Practices (BMPs) specified below.

1. Erosion & Sediment Source Control

a. Sequence construction to install sediment-capturing devices first, followed by runoff control measures and runoff conveyances. Land clearing activities should only commence after the minimization and capture elements are in place.

b. Time the clearing and grading activities to avoid the rainy season (October 15 through April 30).

c. Minimize the area of bare soil exposed at one time (phased grading).

d. Clear only areas essential for construction.

e. Within five days of clearing or inactivity in construction, stabilize bare soils through either non-vegetative BMPs, such as mulching or vegetative erosion control methods such as seeding. Vegetative erosion control shall be established within two weeks of seeding/planting.

f. Construction entrances should be stabilized immediately after grading and frequently maintained to prevent erosion and control dust.

g. Control wind-born dust through the installation of wind barriers such as hay bales and/or sprinkling.

h. Soil and/or other construction-related material stockpiled on site shall be placed a minimum of 200 feet from all wetlands and drain courses. Stockpiled soils shall be covered with tarps at all times of the year.

i. Excess fill shall not be disposed of in the Coastal Zone unless authorized through either an amendment to this coastal development permit or a new coastal development permit.

2. Runoff Control and Conveyance

a. Intercept runoff above disturbed slopes and convey it to a permanent channel or stormdrains by using earth dikes, perimeter dikes or swales, or diversions. Use check dams where appropriate.

b. Provide protection for runoff conveyance outlets by reducing flow velocity and dissipating flow energy.

3. Sediment-Capturing Devices

a. Install stormdrain inlet protection that traps sediment before it enters the storm sewer system. This barrier could consist of filter fabric, straw bales, gravel, or sand bags.

b. Install sediment traps/basins at outlets of diversions, channels, slope drains, or other runoff conveyances that discharge sediment-laden water. Sediment traps/basins shall be cleaned out when 50% full (by volume).

c. Use silt fence and/or vegetated filter strips to trap sediment contained in sheet flow. The maximum drainage area to the fence should be 0.5 acre or less per 100 feet of fence. Silt fences should be inspected regularly and sediment removed when it reaches 1/3 the fence height. Vegetated filter strips should have relatively flat slopes and be vegetated with erosion-resistant species.

4. Chemical Control

a. Store, handle, apply, and dispose of pesticides, petroleum products, and other construction materials properly.

b. Establish fuel and vehicle maintenance staging areas located away from all drainage courses, and design these areas to control runoff.

c. Develop and implement spill prevention and control measures.

d. Provide sanitary facilities for construction workers.

e. Maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents should not be discharged into sanitary or storm sewer systems. Washout from concrete trucks should be disposed of at a location not subject to runoff and more than 50 feet away from a stormdrain, open ditch or surface water.

f. Provide adequate disposal facilities for solid waste, including excess asphalt, produced during construction.

g. Develop and implement nutrient management measures. Properly time applications, and work fertilizers and liming materials into the soil to depths of 4 to 6 inches. Reduce the amount of nutrients applied by conducting soil tests to determine site nutrient needs.

B. The applicant shall undertake development in accordance with the final erosion control plans approved by the Executive Director. No proposed changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required. The applicant shall be fully responsible for advising construction personnel of the requirements of the Erosion Control Plan.

C. Erosion Control Maintenance**.** All of the above described erosion control measures shall be maintained pursuant to the following requirements.

1. All BMP traps/separators and/or filters shall be cleaned at minimum prior to the onset of the storm season and no later than October 15th each year.

2. Sediment traps/basins shall be cleaned out at any time when 50% full (by volume).

3. Sediment shall be removed from silt fences at any time when it reaches 1/3 the fence height.

4. All pollutants contained in BMP devices shall be contained and disposed of in an appropriate manner.

5. Non-routine maintenance activities that are expensive but infrequent, such as detention basin dredging, shall be performed on as needed based on the results of the monitoring inspections described above.

D. Monitoring**.** Throughout the construction period, the applicants shall conduct regular inspections of the condition and operational status of all structural BMPs required by the approved Erosion Control Plan. The applicant shall report the results of the inspections in writing to the Executive Director prior to the start of the rainy season (no later than October 15th), after the first storm of the rainy season, and monthly thereafter until April 30th for the duration of the project construction period. Major observations to be made during inspections and reported to the Executive Director shall include: locations of discharges of sediment or other pollutants from the site; BMPs that are in need of maintenance; BMPs that are not performing, failing to operate, or inadequate; and locations where additional BMPs are needed. Authorized representatives of the Coastal Commission and/or the City of Half Moon Bay shall be allowed to enter the property as needed to conduct on-site inspections throughout the construction period.

5. <u>Storm-water Pollution Prevention</u>

A. Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a Storm-water Pollution Prevention Plan (SWPPP). The SWPPP shall demonstrate that the approved development shall maintain post-development peak runoff rate and average volume at levels equal to pre-development levels, and reduce the post-development loadings of Total Suspended Solids (TSS) so that the average annual TSS loadings are no greater than pre-development loadings. The SWPPP shall incorporate the Best Management Practices (BMPs) described below.

1. <u>Minimize Creation of Impervious Surfaces</u>

a. Design residential streets for the minimum required pavement widths needed to comply with all zoning and applicable ordinances to support travel lanes (including

the redesign of Bay View Ave. to a reduced with commensurate with the need for the reduced scope of development required in Condition 1), on-street parking, emergency, maintenance and service vehicle access, sidewalks, and vegetated open channels.

b. Minimize the number of residential street cul-de- sacs and incorporate landscaped areas to reduce their impervious cover. The radius of cul-de-sacs should be the minimum required to accommodate emergency and vehicle turnarounds. Alternative turnarounds shall be employed where allowable.

c. Avoid curb and gutter along driveways and streets where appropriate.

d. Incorporate landscaping with vegetation or other permeable ground cover in setback areas between sidewalks and streets.

e. Use alternative porous material/pavers (e.g., hybrid lots, parking groves, permeable overflow parking, crushed gravel, mulch, cobbles) to the extent practicable for sidewalks, driveways, parking lots, or interior roadway surfaces.

f. Reduce driveway lengths, and grade and construct driveways to direct runoff into adjacent landscaped areas.

2. Roads

a. Install vegetative filter strips or catch basin inserts with other media filter devices, clarifiers, grassy swales and berms, or a combination thereof to remove or mitigating oil, grease, hydrocarbons, heavy metals and particulates from storm-water draining from all roads.

b. Roads should be vacuum swept monthly at a minimum, to remove debris and contaminant residue.

3. Landscaping

a. Native or drought tolerant adapted vegetation should be selected, in order to minimize the need for fertilizer, pesticides/herbicides, and excessive irrigation.

b. Where irrigation is necessary, the system must be designed with efficient technology. At a minimum, all irrigation systems shall have flow sensors and master valves installed on the mainline pipe to ensure system shutdown in the case of pipe breakage. Irrigation master systems shall have an automatic irrigation controller to ensure efficient water distribution. Automatic irrigation controllers shall be easily adjustable so that site watering will be appropriate for daily site weather conditions. Automatic irrigation controllers shall have rain shutoff devices in order to prevent unnecessary operation on rainy days.

B. The applicant shall undertake development in accordance with the final plans approved by the Executive Director. No proposed changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required. The applicant shall be fully responsible for advising construction personnel of the requirements of the Storm-water Pollution Prevention Plan.

C. Storm-water Pollution Prevention Maintenance.

1. All BMP traps/separators and/or filters shall be cleaned prior to the onset of the storm season and no later than October 15th each year. All pollutants contained in BMP devices shall be contained and disposed of in an appropriate manner.
2. Non-routine maintenance activities that are expensive but infrequent, such as detention basin dredging, shall be performed on as needed based on the results of the monitoring inspections described below.

D. Storm-water Pollution Prevention Monitoring.

The applicant shall conduct an annual inspection of the condition and operational status of all structural BMPs provided in satisfaction of the approved SWPPP including the detention basin. The results of each annual inspection shall be reported to the Executive Director in writing by no later than June 30th of each year following the commencement of construction. Major observations to be made during inspections and reported to the Executive Director shall include: locations of discharges of sediment or other pollutants from the site; BMPs that are in need of maintenance; BMPs that are not performing, failing to operate, or inadequate; and locations where additional BMPs are needed. Authorized representatives of the Coastal Commission and/or the City of Half Moon Bay shall be allowed to enter the property as needed to conduct on-site inspections of the detention basin and other structural BMPs.

E. Water Quality Monitoring

1. Prior to issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director a **Water Quality Monitoring Plan** (WQMP). The WQMP shall be designed to evaluate the effectiveness of the SWPPP to protect the quality of surface and groundwater and shall provide the following:
    a. The WQMP shall specify sampling locations appropriate to evaluate surface and groundwater quality throughout the project site, including, but not limited to all major storm drains.
    b. The WQMP shall specify sampling protocols and permitted standards for all identified potential pollutants including, but not necessarily limited to: heavy metals, pesticides, herbicides, suspended solids, nutrients, oil, and grease.
    c. Beginning with the start of the first rainy season (October 15 - April 30) following commencement of development and continuing until three years following completion of all grading, landscaping and other earth disturbing work, surface water samples shall be collected from the specified sampling locations during the first significant storm event of the rainy season and each following month through April 30. Sampling shall continue thereafter in perpetuity on an annual basis during the first significant storm event of the rainy season.
    d. Results of monitoring efforts shall be submitted to the Commission upon availability.
2. If any water quality standards specified in the WQMP are exceeded, the applicant shall assess the potential sources of the pollutant and the potential remedies. If it is determined based on this assessment that applicable water quality standards have not been met as a result of inadequate or failed BMPs, corrective actions or remedies

shall be required. If potential remedies or corrective action constitute development, as defined in Section 30106 of the Coastal Act, an amendment to this permit shall be required.

6. Grading Plan

A. Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a **Final Grading Plan** specifying:

1. The respective quantities of cut and fill and the final design grades and locations for all project related grading, including streets, drainage, and utilities, and including a specific plan (and identification of the borrow site for the importation of fill.

2. The phasing of all grading during construction.

B. The applicant shall undertake development in accordance with the final plans approved by the Executive Director. No proposed changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required. The applicant shall be fully responsible for advising construction personnel of the requirements of the grading plan.

7. Landscaping plans

A. Prior to issuance of the permit the applicant shall submit landscaping plans, subject to executive director review and approval, providing for revegetation of disturbed slopes prior to the rainy season, and aesthetic improvements between Highway 1 and the first row of lots adjacent to Highway 1 designed to soften the appearance of the project**.**

B. The applicant shall undertake development in accordance with the final plans approved by the Executive Director. No proposed changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required. The applicant shall be fully responsible for advising construction personnel of the requirements of the landscaping plan.

8. Residential Development

This permit does not authorize construction of any single-family homes on the site. All future residential development shall be the subject of a separate coastal development permit application or applications to the City of Half Moon Bay.

9. Traffic Improvements.

Project-related construction traffic is prohibited on Highways 1 and 92 between the hours of 7:00AM and 9:00PM during summer weekends (Memorial Day through Labor Day) and during the Half Moon Bay Pumpkin Festival weekend.

10. City Conditions

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act. Consistent with the project description for this coastal development permit, all previous conditions of approval imposed on the project by the City of Half Moon Bay pursuant to an authority other than the coastal development permit requirements of the certified Half Moon Bay LCP remain in effect (Half Moon Bay File

Number PDP-10-98; see Exhibit 11). Any conflicts between such local conditions and the conditions of this coastal development permit shall be resolved by permit amendment(s).

3.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

3.1 Project Location and Site Description

The proposed project consists of the subdivision of a 24.7-acre parcel (APN 048-280-020) into lots for 77 detached single-family homes, plus four open space or park lots of varying sizes: lot 63 (2.35 acres) and lot 69 (0.19 acres) in the southeast corner of the site, and lot 46 (0.12 acres) and lot 47 (0.34 acres) in the middle of the site. Lot 47 would be a "park" lot and would be graded to accommodate playground-type uses; lots 63, 69 and 46 would remain open space or conservation lots. The 77 residential lots would be a minimum size of 7,500 square feet (0.17 acres); the largest residential lot would be 15,897 sq. feet (0.36 acres). The City's approval language initially appeared to contemplate the construction of individual homes on the single-family home lots; however the City and applicant have both clarified that home construction is not a part of this application (see applicant's certification; Exhibit 8).

The proposed project includes grading, road construction (proposed roads Bayview Dr., Seaside Dr., a Golden Gate Dr. extension from the adjacent subdivision to the south), Beachview Dr., and 3 cul-de-sacs – Saltaire Ct., Tidewater Ct., and Baywood Ct.), street lighting, sewer and water improvements, drainage facilities, and other infrastructure improvements sufficient to support the 77 units. Grading for roads and building pads would include 30,600 cu. yds. of balanced cut and fill, with an additional importation of 44,200 cu. yds. (the donor site has not been determined). Grading would take place outside the rainy season. The project also includes construction of a 6 feet high, approximately 520 feet long, sound wall along the Highway 1 frontage of the property.

The project site is located on the east side of Highway 1, between Terrace and Grandview Avenue, in the City of Half Moon Bay (Exhibit 1). The property is zoned R-1-B-2 (Single Family residential with a 7,500 square-foot lot size minimum). The lots to the south of the site are developed with single-family residences; and the lots to the north (Glencree) and east (Dykstra Ranch/Pacific Ridge[1]) are undeveloped but are zoned for residential and planned unit development. Highway 1 is immediately west of the project site.

At the western edge of the property (adjacent to Highway One), the property elevation is approximately 50 feet above Mean Sea Level (MSL), rising to approximately 100 feet MSL at the eastern edge of the project site. The only visible drainage features on-site are a remnant stock pond and a small seasonal drainage at the southeastern corner of the property, which flows onto the site from the east and into an inlet structure and culvert. In addition, eucalyptus and cypress trees exist on small portions of the central and southeastern areas of the project site.

[1] Recently proposed as 134 residential lots on 3 existing parcels totaling 114 acres; as approved by the Commission on July 26, 2001, the project would consist of ____ homes (A-1-HMB-99-022 – Ailanto Properties/Pacific Ridge Subdivision)

3.2 Project History

On June 30, 1990, the City of Half Moon Bay approved a Vesting Tentative Map for an 83-lot subdivision. The City of Half Moon Bay approved the Vesting Tentative map in 1990 prior to the certification of the City's LCP.

On March 11, 1999, after the 1996 certification of the City's LCP, the City of Half Moon Bay's Planning Commission denied a coastal development permit for the subdivision and residential units.

On March 17, 1999, the applicant, Keenan Land Company, filed an appeal of this denial with the Half Moon Bay City Council.

On March 21, 2000, the City Council denied the request for approval of the project.

On May 19, 2000, the applicant filed a complaint in San Mateo County Superior Court to overturn the City's denial of the coastal development permit.

On February 22, 2001, the San Mateo County Superior Court ordered the City to issue a coastal development permit consistent with the 1990 Vesting Tentative Map.

On March 20, 2001, the City Council approved the coastal development permit attaching the conditions of the 1990 Vesting Tentative Map approval as conditions to the coastal development permit (Exhibit 11).

On March 30, 2001, the Commission received notice of the City's final action approving a coastal development permit for the project.

On April 13, 2001, the Commission received an appeal from Commissioners Wan and Desser and from Michael Ferreira and Patrick O'Brien.

On May 9, 2001, the Commission found that the appeal of the City's action on this project raised a substantial issue.

3.3 Wetlands

Since the applicant proposes development, including the creation of new residential lots, construction of roads and building pads and installation of utility lines within wetlands and wetland buffer areas in conflict with the wetland fill and buffer policies and standards of the LCP, the proposed project must be conditioned to avoid such impermissible development within wetland and wetland buffer areas.

3.3.1 Issue Summary

The history of the project site includes extensive evidence of human disturbance over the middle and latter half of the 20th century, including farming, construction and improvements to Highway 1, drainage modifications to alleviate flooding in the area, grading for roadbeds and other purposes, and disking of vegetation. Looking at current site conditions, the applicant acknowledges the presence of wetlands in the southeast corner of the site, and proposes no physical development or other site disturbance within those wetlands or within a 100-foot buffer zone from those wetlands. A number of other areas of the site (Areas W1-W17, Exhibit 4) are dominated by wetland vegetation, and thus are considered wetlands under the Coastal Act, CDFG and USFWS wetland definitions. However, the applicant

maintains that these areas are not wetlands under the LCP because they are vernally wet areas and lack hydric soil indicators.

The Coastal Act (as implemented through the Commission's administrative regulations), the California Department of Fish and Game (CDFG), and the U.S. Fish and Wildlife Service (USFWS) all consider "wetlands" to include any area that is wet enough long enough to promote the formation of hydric soils or to support the growth of plants that normally occur in water or wet ground.[2] The Half Moon Bay LCP defines wetland in a similar manner. In fact, the Definitions Section of the city's zoning code specifically incorporates the definition used by these three agencies. In addition, however, unlike the definitions used by the Commission, CDFG and USFWS, two other sections of the LCP state that wetlands do not include "vernally wet areas where the soils are not hydric".

The Commission disagrees with the applicant's assertion that Areas W1-W17 are not wetlands because they are "vernally wet areas" that lack hydric soils. Instead, the Commission finds that Areas W1-W17 are wetlands as defined under the Half Moon Bay LCP because the evidence presented to the Commission demonstrates that each of these areas: (1) is dominated by wetland vegetation, (2) has hydric soils, and (3) has wetland hydrology. In addition, the Commission finds that Areas W1-W17 **[Verify if W1-W14 or 17]** are not excluded from the LCP definition of wetlands because they are not "vernally wet areas where the soils are not hydric." As proposed, the Beachwood development would fill these wetlands for residential development in conflict with the Half Moon Bay LCP. Therefore, the Commission imposes Special Conditions 1 and 2 prohibiting development within 100 feet of the wetland areas on the site as required by the wetland fill and buffer policies of the LCP.

3.3.2 LCP Policies

LCP Zoning Code Sections 18.38.080, and LUP Policies 3-2, 3-3, 3-11, 3-12 and 3-22 prohibit any uses that would have significant adverse impacts on sensitive habitat areas (including wetlands), require any development in areas adjacent to sensitive habitats to be sited and designed to prevent impacts that could significantly degrade the sensitive habitats, require, at a minimum, a 100-foot buffer from wetlands, ponds, and other wet areas, and severely restrict uses within buffer zones. In addition, pursuant to LUP Policy 1-1, the city has adopted the Chapter 3 Policies of the Coastal Act as guiding policies of the LUP. Accordingly, the city's LUP adopts Coastal Act Sections 30230-30233 and 30240, which also require that development protect the biological productivity and quality of coastal waters, wetlands and sensitive habitat areas.

The applicable sections of the LCP include the following, which are reproduced in their entirety in Appendix A at the end of this report:

3-1 Definition of Sensitive Habitats

(a) Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and as those areas which meet one of the following criteria: (1) habitats containing or supporting "rare and endangered"

[2] This is a simplified statement of the basic wetland definition used by the three agencies. This topic is discussed in greater detail below.

species …, (2) all perennial and intermittent streams and their tributaries, … (6) lakes and ponds and adjacent shore habitat, …

Such areas include riparian areas, wetlands, …, and habitats supporting rare, endangered, and unique species.

LUP APPENDIX A: Special Definitions WETLAND…

For San Mateo County, it is appropriate to adapt the definition of wetland used by the U.S. Fish and Wildlife Service (Classification of Wetlands and Deep-Water Habitats of the United States, (1977). This definition embraces several important concepts which are relevant to the San Mateo Coast: (1) the relationship of the water table with respect to the ground surface; (2) the duration of the water on or at the surface; (3) the soil types involved with the permanent or temporary saturated conditions; and (4) the flora and fauna adapted to the wet conditions.

The most important feature which acts as a common denominator is the soil as indicated in Item 3, above. As a result of the above considerations, the Local Coastal Plan adopts the following U.S. Fish and Wildlife Service definition of wetland:

Wetland is an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mudflats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and man-made impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernally wet areas where the soils are not hydric.

Zoning Code Sec. 18.02.040 Definitions

…Wetland: The definition of wetland as used and as may be periodically amended by the California Department of Fish and Game, the California Coastal Commission and the US Fish and Wildlife Service.

Zoning Code Sec. 18.38.020 Coastal Resource Areas. The Planning Director shall prepare and maintain maps of all designated Coastal Resource Areas within the city. Coastal Resource Areas within the city are defined as follows:…

As defined by the US Fish and Wildlife Service, a wetland is an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mud flats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds,

and man-made impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds, and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernally wet areas where the soils are not hydric.

3-3 Protection of Sensitive Habitats

(a) Prohibit any land use and/or development which would have significant adverse impacts on Sensitive Habitat areas.

(b) Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the Sensitive Habitats. All uses shall be compatible with the maintenance of biologic productivity of such areas.

3-4 Permitted Uses

(a) Permit only resource-dependent or other uses which will not have a significant adverse impact in sensitive habitats.

(b) In all sensitive habitats, require that all permitted uses comply with U.S. Fish and Wildlife Service and State Department of Fish and Game regulations.

3-5 Permit Conditions

(a) Require all applicants to prepare a biologic report by a qualified professional selected jointly by the applicant and the city to be submitted prior to development review. The report will determine if significant impacts on the sensitive habitats may occur, and recommend the most feasible mitigation measures if impacts may occur. The report shall consider both any identified sensitive habitats and areas adjacent. Recommended uses and intensities within the sensitive habitat area shall be dependent on such resources, and shall be sited and designed to prevent impacts which would significantly degrade areas adjacent to the habitats. The city and the applicant shall jointly develop an appropriate program to evaluate the adequacy of any mitigation measures imposed.

(b) When applicable, require as a condition of permit approval, the restoration of damaged habitat(s) when, in the judgment of the Planning Director, restoration is partially or wholly feasible.

3-11 Establishment of Buffer Zones

(a) On both sides of riparian corridors, from the limit of riparian vegetation extend buffer zones 50 feet outward for perennial streams and 30 feet outward for intermittent streams.

(b) Where no riparian vegetation exists along both sides of riparian corridors, extend buffer zones 50 feet from the bank edge for perennial streams and feet from the midpoint of intermittent streams.

(c) Along lakes, ponds, and other wet areas, extend buffer zones 100 feet from the high water point, except for man-made ponds and reservoirs used for agricultural purposes for which no buffer zone is designated.

3-12 <u>Permitted Uses in Buffer Zones</u>

Within buffer zones, permit only the following uses: (1) uses permitted in riparian corridors, (2) structures on existing legal building sites, set back 20 feet from the limit of riparian vegetation, only if no feasible alternative exists, and only if no other building site on the parcel exists, … (5) no new parcels shall be created whose only building site is in the buffer area except for parcels created in compliance with Policies 3.3, 3.4 and 3.5 if consistent with existing development in the area and if building sites are set back 20 feet from the limit of riparian vegetation or if no vegetation 20 feet from the bank edge of a perennial and 20 feet from the midpoint of an intermittent stream.

3.3.3 Definition of Wetlands

Various state and federal agencies are charged with regulating the use of wetlands within the Coastal Zone, including the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the California Department of Fish and Game, the California Coastal Commission, and local jurisdictions with a certified LCP, among others. While each of these agencies regulates wetlands under a different statutory authority, they all define "wetland" based on three basic parameters: hydrology, soil type, and vegetation. The differences in how these agencies determine whether a particular area qualifies as a wetland lie in the way that these three parameters are treated. Generally speaking, the Corps uses the narrowest definition, requiring evidence of each of the three wetland parameters. USFWS, CDFG, the Commission and local governments with a certified LCP generally accept evidence of positive field indicators of any one of the three parameters to demonstrate that an area is a wetland, i.e. areas wet long enough to bring about the formation of hydric soils or to support the growth of wetland plants. This difference is often expressed as a "three parameter" versus a "one parameter approach". This expression, however, is an oversimplification of a complex topic.

By way of background, the wetland definition used by the Corps is provided in the Corps 1987 Wetland Delineation Manual (Environmental Laboratory 1987) states in part:

> *Definition: The CORPS (Federal Register, Section 328.3(b), 1991) and the EPA (Federal Register, Section 230.4(t), 1991) jointly define wetlands as: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.*

The USFWS, CDFG, Coastal Commission and City of Half Moon Bay Local Coastal Program wetland definitions (the last of which is the applicable standard of review in this case) are all

based on a classification scheme published in Cowardin et al. (1979). (Zoning Code section 18.02.040.) The Cowardin classification system provides:

> *Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominantly hydrophytes*[3]*; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.*

Consistent with Cowardin, the wetland definitions provided under the Coastal Act and the Commission's administrative regulations are based on periodic or permanent wetland hydrology. Coastal Act Section 30121 defines wetland as:

> *Wetland means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, or fens.*

Commission Regulation Section 13577(b) elaborates:

> *…Wetlands are lands where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent or drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salt or other substance in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deepwater habitats.…*

As cited in full above, the Half Moon Bay LCP defines wetlands as:

> *Wetland is an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground…*

The Cowardin wetland definition, which serves as the basis for the CDFG, Coastal Commission and City of Half Moon Bay wetland definitions, and the Corps wetland definition are fundamentally similar. Both definitions are based on the presence, either periodic or permanent, of either shallow surface water or groundwater at or near the surface (i.e., wetland hydrology). However, while the agencies essentially agree on this basic definition, they differ on the parameters for which there must be positive field evidence for wetlands to exist.

Though some exceptions are provided (e.g., unvegetated mudflats), in most cases, the Corps requires evidence (field indicators) of each of the three parameters, hydrology, hydric soils, and hydrophytic vegetation. The Corps Manual specifies:

[3] Normally, a particular vegetation type (e.g., hydrophytic vegetation) is considered to predominate when it makes up more than 50% of the vegetation.

> *Technical approach for the identification and delineation of wetlands: Except in certain situations defined in this manual, evidence of a minimum of one positive wetland indicator from each parameter (hydrology, soil, and vegetation) must be found in order to make a positive wetland determination.*

The Corps delineation method can be under-inclusive for two fundamental reasons: (1) saturated soils and shallow ponding are often difficult to document in seasonal wetlands, and (2) in problem areas such as Half Moon Bay, wetland indicators require a high degree of interpretation.

In seasonal wetlands, evidence of wetland hydrology may be present for only part of the year, and may not be present at all during dry years. Consequently, the result of a Corps delineation can vary depending on the timing of data collection. This is exacerbated by the exception provided in the Corps Manual for some indicators of wetland hydrology, if they are observed during an "unusually wet period." Not only does this exception further reduce the already limited period during which reliable data concerning the hydrologic characteristics of seasonal wetlands may be collected, but the term "unusually wet period" itself is subject to interpretation and debate. Because of these and other constraints, direct observation of wetland hydrology is often problematic in seasonal wetlands.

Although the indicators of wetland soils and vegetation are often more readily observed than hydrology, these too are subject to interpretation and uncertainty. For example, disturbance from agriculture and other activities as well as certain soil types can mask common indicators of hydric soil conditions, and the results of vegetation surveys can vary depending on time of year and survey methodologies. Accordingly, although the Corps method attempts to standardize wetland delineation, in practice, disagreement between experts over the adequacy and interpretation of data concerning the presence or absence of wetland indicators is common.

Given the imprecise nature of the science, the USFWS, CDFG, and Coastal Commission take a pragmatic approach towards determining the presence or absence of the hydrologic conditions responsible for forming wetlands. The methods used by these agencies is based on the principle that wetland hydrology is a necessary precedent to the formation of hydric soils and the prevalence of hydrophytic vegetation. Thus, in the absence of direct observation of wetland hydrology, the presence of either hydric soils or hydrophytic vegetation is considered a reliable indicator that wetland hydrology must be present with sufficient frequency to allow such conditions to occur. Thus, wetlands (i.e. areas wet long enough to bring about the formation of hydric soils or plants), may be identified and delineated based on substantial evidence of any one of the three wetland parameters.[4] As discussed herein, the City of Half Moon Bay certified LCP also generally adopts this approach. However, on December 14, 2000, the San Mateo Superior Court ruled that the LCP contains an exception to the above approach for vernally wet areas where the soils are not hydric. Although the Commission does not agree with this ruling and is not bound by such ruling because it is not yet final, the Commission nevertheless finds for the reasons discussed below, that the property contains wetlands that meet all three wetland parameters and which also are not vernally wet areas. Therefore, the question whether these

[4] As pointed out in the Corps's Manual (p. 7):

> The FWS system requires that a positive indicator of wetlands be present for any one of the three parameters, while the (CORPS) technical guidance for wetlands requires a positive wetland indicator be present for each parameter (vegetation, soils, and hydrology) , except in limited instances identified in the manual

areas are subject to the exclusion in the LCP for vernally wet areas that do not contain hydric soils is no longer at issue. Following is an evaluation of the evidence available to the Commission at the time of its de novo action on this appeal for each of the three wetland parameters on the project site.

3.3.4 Vegetation

With regard to the parameter of wetlands vegetation, the definition of wetlands contained in the Half Moon Bay certified LCP defines wetland to include areas "where the water table is at, near, or above the land surface long enough to… support the growth of plants which normally are found to grow in water or wet ground." Under both the 1987 Corps Manual and the Cowardin classification system which serves as the basis for the definition of wetlands utilized by the City of Half Moon Bay certified LCP, as well as the Commission, CDFG, and USFWS, the wetland vegetation parameter is met in areas where more than 50 percent of the dominant vegetation consists of hydrophytes. (Zoning Code section 18.02.040.) However, many plants that are classified as hydrophytes may also occur in upland areas. Therefore, these plants are further classified according to the frequency with which they are found in wetlands as opposed to uplands. Species classified as facultative upland, for example, occur in wetlands 1 to 33 percent of the time, while more than 99 percent of the occurrences of obligate species are in wetlands (Reed 1988).

Vegetation surveys conducted on the project site by consultants for the applicant and the city demonstrate that more than 50 percent of the dominant vegetation within Areas W1-W17 are facultative wet (occurring 66 to 99 percent in wetlands) and obligate species (Exhibit 26). The Commission also notes that the applicant only took samples within 5 of the 17 study areas. Nevertheless, based on the evidence that was collected, both the applicant and the city agree that all 17 study areas meet the wetland vegetation parameter as used under the LCP.

Based on a review of these vegetation surveys, the Commission staff biologist concluded that all parties agree that:

> *There is a preponderance of wetland plants (designated FACW or OBL) in many of the depressions at Beachwood, including those designated W1-W17 by Wetland Research Associates.* (Exhibit 4)

Conclusion – Vegetation

Based on the applicant's own wetland delineations and consultant reports, as well as subsequent review and field work conducted by the Commission's staff biologist, the Commission finds that Areas W1-W17 are dominated by hydrophytic vegetation. Therefore, because each of these areas is wet enough long enough to support the growth of plants that normally are found to grow in water or on wet ground, the Commission finds that Areas W1-W17 are wetlands, as defined under the Half Moon Bay LCP.

3.3.5 Hydrology

Although neither the Coastal Act nor the certified LCP define wetland hydrology, the 1987 Corps Manual defines wetland hydrology as:

> *Hydrology: The area is inundated either permanently, or periodically at mean water depths <6.6 ft. (~2m), or the soil is saturated to the surface at some time during the*

> *growing season of the prevalent vegetation. The period of inundation or soil saturation varies according to the hydrologic/soil moisture regime and occurs in both tidal and non-tidal situations.*

The length of time and time of year that an area must be either inundated or saturated to indicate wetland hydrology varies according to geography and climate. However, the predominant regulatory scheme assumes that wetland hydrology is present when areas are saturated for a minimum of 7 to 18 days during years with normal precipitation.[5] In Coastal California's Mediterranean climate, field indicators of periodic inundation, such as observations of saturation or ponding or observations of sediment deposits, are commonly accepted as sufficient evidence to demonstrate wetland hydrology.

There is a significant body of evidence of periodic inundation and saturation on the Beachwood site. This evidence includes: (1) positive field indicators of wetland hydrology including direct observations of inundation and saturation, (2) drainage characteristics as demonstrated by site topography and shown on historic USGS maps and aerial photographs, and (3) efforts taken to artificially drain the site.

Field Indicators of Wetland Hydrology

The city considered the following evidence of inundation and saturation for its March 2000 action on the project:

- February 5, 1999: Huffman & Associates (H&A, March 11, 1999) observed ponding in several depressional areas with hydrophytic vegetation. The first significant rainfall since mid-December 1998 occurred during the period January 15-26 (5.53").[6] Except for 0.87 inches on January 31, there was no additional rainfall prior to the February 5 site visit.
- February 28, 1999: Huffman & Associates observed ponding in several depressional areas with hydrophytic vegetation. All 7.6 inches of February's rainfall occurred between the 5th and 28th.
- July 27, 1999: Wetland Research Associates examined areas W1-W17 and observed indicators of hydrology (e.g. sediment deposits and algal mats) in all test plots within areas of wetland vegetation. At one test plot, the soil was still moist at 10 inches depth. The most recent significant rainfall had occurred 107 days previously (2.72 inches from April 5-11). From April 11 to July 27, there was a total of 0.64 inch of rain in small events scattered throughout the period.
- January 19, 2000: LSA Associates observed ponding in several areas of hydrophytic vegetation. December rainfall was 0.93 inch, and January rainfall through the 19th was 2.78 inches.

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[5] The Corps Manual requires that the soil be saturated in the upper 12 inches for at least 5% of the growing season (18 days in California) for wetland hydrology to be present, but for routine delineations accepts field indicators of periodic inundation (e.g., observation of ponding, sediment deposits or algal mats) as sufficient evidence of the existence of wetland hydrology. The Natural Resources Conservation Service recognizes ponding for at least 7 days both as a criterion for defining a hydric soil and as a field indicator of such soils.

[6] The rainfall summaries associated with the observations discussed in this report are derived from National Weather Service (NOAA) data for Half Moon Bay (Station 043714; Lat 37^{o} 28', Lon 122^{o} 27', Elev 40') obtained from the Western Regional Climate Center.

- February 8, 2000: LSA Associates observed algal blooms and ponding to a depth of 2 to 18 inches in Areas W1-W3, W5 and W12 and 2 other areas outside of the 17 previously identified wetland study areas. During the period January 20-26 there were 4.3 inches of rain. An additional 1.39 inches of rain fell from January 30 to February 5.
- February 22, 2000: LSA Associates observed algal blooms and ponding to a depth of 2 to 18 inches in eleven areas with hydrophytic vegetation. During the period February 9-22, there were 6.96 inches of rain.

Subsequent to the applicant and city site visits, and contemporaneous with the processing of the Commission's appeal, the following further evidence of wetland hydrology on the project site has been developed:

- April 23, 1999: Color infrared aerial photograph taken on this date shows ponded or saturated soils in Areas W3, W5, W7, and W12. The most recent rainfall occurred 12 days previously. From April 5 to 11 there were 2.72 inches of rain. March rainfall was 4.82 inches.
- Late January, 2001: Appellant Mike Ferreira photographed a large pond in Area W5 (Exhibit 25). January rainfall was 5.75 inches.
- Late February, 2001: Appellant Mike Ferreira photographed ponding in what appear to be Areas W7 and W13 at the north edge of the site (Exhibit 25). February rainfall was 6.44 inches.
- July 2, 2001: Commission staff biologist Dr. John Dixon observed hydrophytic vegetation, algal mats on the soil surface, and very moist soil at 3-6 inches depth in Area W5. The most recent significant rainfall had occurred 72 days previously (1.1 inches from April 19-21). From April 22 to July 2, there was a total of 0.19 inch of rain.

Site Drainage Characteristics

The site lies in the transition area at the base of the slope between the foothills along the western flank of the Santa Cruz Mountains and the coastal plain in Half Moon Bay. The watershed to the east generally drains through both surface and subsurface flows toward the coast. The wetland delineation conducted on the Pacific Ridge Development site identified numerous wetlands in the area directly up-slope from the Beachwood site fed by surface water drainage, seeps and springs (CCC 2001). The Commission finds that similar surface and subsurface drainage characteristics exist on the adjacent Beachwood site as it is directly down-slope and within the same watershed as the Pacific Ridge site. This finding is supported by the following statement made by the city's consultants:

> *…[H]istorical aerial photos of the area dating back to the 1930s… indicate that the subject property has been the natural route of drainage water from the hills to the east. Vegetation that is visible in the photos is consistent with what would be expected in an area receiving more surface water than the surrounding area…*

Drainage Modifications

The applicant contends that to the extent that any wetland indicators are present in Areas W3-W17, this is due solely to the removal of soil by the city in the mid 1980s to use as fill for other construction. The applicant asserts that Areas W3-W17 are depressions formed by the city's activities, and that prior to this work, the site was devoid of any wetland characteristics (Exhibit 12). The city responds to this contention in a letter dated March 3, 1999, to the applicant, maintaining that these wetlands "…were not caused by the city, [and] … are developing in artificial 'low areas' created as a result of grading and/or trenching activities conducted by the property owners themselves" (Exhibit 14). The city's statement is supported by documents contained in the Commission's files for CDP Permit Waiver 3-91-50DM, granted for temporary stockpiling of 32,000 cubic yards of fill on the Beachwood site for use during "future development of the site." The permit application states:

> *There is no topsoil in the areas of work [i.e., where the fill was proposed to be stockpiled], as it was stripped away by a previous property owner in connection with the road cutting activities that they appear to have been undertaken on the property.*
>
> *Separately, approximately 1,000 cubic yards were brought onto the Beachwood property to restore the grade in several locations where deep cuts and holes had been made by a previous owner. A grading permit was obtained in connection with this work from the City of Half Moon Bay.*

The file for the permit waiver contains a letter from the applicant's representative Beth Wiefels to the city regarding this earlier work, stating that the 1,000 cubic yards of fill were used:

> *to fill the large holes that were created on the Beachwood property by its former owners (the William Lyons Company) in connection with their grading activities on their Highland Park properties. By filling in the holes, we will be restoring the land to its normal condition and eliminating a safety hazard.*

Thus, it appears that there is a long history of excavation and fill on the project site, and that at least some of this work has been conducted by owners of the property. At this point, it is difficult to ascertain to what degree these activities have increased or decreased wetland areas on the site. However, notwithstanding this history of alteration and disturbance, any wetlands as defined by the LCP that are currently present on the site are protected under the LCP whether formed naturally or artificially.

Historic USGS maps from 1952, 1961, 1968, and 1973 and aerial photographs show that, prior to drainage modifications made in the 1980s, an intermittent blue line stream drained onto and across the site from the east (Exhibit 17). In 1984, the Commission granted CDP 3-83-16 to the city for installation of an underground storm drain system to serve the Highland Park subdivision directly south of the Beachwood site and future development on the Beachwood site (CCC 1984). The permitted development included installation of a 48-inch drain pipe with an inlet adjacent to the southern boundary of the project site, a 30-inch drain pipe adjacent to the northern property boundary, and stub-out storm drain inlets for future drainage on the Beachwood site. CDP 3-83-16 did not authorize any grading or other development on the Beachwood site other than the installation of drainage pipes and inlets around the perimeter of the property. The findings for the permit state:

> *…improvements will only be installed for the project area (Highland Park Subdivision) as provided for in this permit. Any improvements outside the project areas will require a separate coastal development permit.*

A berm was subsequently constructed along the eastern site boundary diverting the intermittent stream around the site and to an inlet to the newly installed 48-inch drainage pipe. These drainage alterations have substantially reduced the flow of surface water onto the project site from the east.

In addition to diverting surface drainage away from the project site and into an underground storm drain, the applicant pumped water from the site into the storm drain system on or around the end of January and beginning of February 1999 (Exhibit 18). The Commission notes that the applicant undertook this pumping immediately prior to Terry Huffman's observations of ponding on the site on February 5, 1999. The applicant contends that this pumping was necessary to prevent flooding caused by the city's failure to properly maintain the drainage system constructed under CDP 3-83-16 (Exhibits 12-13). However, it appears that the pumping had the effect of draining water from Area W5 into the storm drain system (Exhibit 19**)**.

Discussion

Based on the field indicators that it observed on July 27, 1999, WRA submitted a wetland delineation report for the site stating that wetland hydrology was present in each of the depressions designated W1-W17 and that each of those areas was a "man-induced wetland" according to the 1987 Corps Wetland Delineation Manual (WRA 1999a).[7] WRA subsequently submitted a second wetland delineation revising its original determination, concluding that there was no evidence of wetland hydrology except in Areas W1a and W2. WRA based this determination on the assertion that there were "extraordinary levels of rainfall" in January and February that were beyond the "normal condition used to described hydric soils." A similar argument could potentially be made to discount the observations made in 2000 and 2001. It is therefore important to determine what is a "usual" or "normal" amount of monthly or annual rainfall. It is not sufficient to simply assert that 137% of average or 199% of average or any other particular figure is abnormal. What is necessary is to examine the actual frequency distribution of the rainfall totals for the periods of interest (e.g. rain years or Januarys) for the entire record, in this case 52 years. If there were little year-to-year variability in rainfall, then, say, 150% of the average might be unusual. On the other hand, if there were a great deal of year-to-year variability, then even 200% of average might be common. The appropriate analysis was not undertaken by WRA or any of the other consultants involved in this project.

Frequency distributions for January rainfall, February rainfall, and rain year (July 1 – June30) rainfall using NOAA data for Half Moon Bay are presented in Figure X. The amount of rainfall in rainfall classes (e.g., 0.5-1.0 inch or 20-22 inches) is shown on the x-axis. The number of years with actual rainfall within each rainfall class is plotted on the y-axis. For example, there were 4 years during which January rainfall was in the range 2 – 2.5 inches, and there were 8 rain years when the annual total rainfall was in the range 18-20 inches. The dark vertical line is the median rainfall. By definition, half the years were wetter and half the years were drier than the

[7] The CORPS did not exert jurisdiction over any of the wetlands within the project footprint because they were deemed exempt as "waterfilled depressions created in dry land incidental to construction activity"; Fong, C.C. (CORPS). January 10, 2000. Letter to Michael Josselyn, WRA.

median. The next step is to define "unusual" or "abnormal." For this analysis, staff defined "unusual" as the wettest 10% of years and the driest 10% of years. The 10th and 90th percentiles are shown on the graphs by light vertical lines. All rainfall totals between the light vertical lines are "normal," whereas all those outside those lines are "unusual." By this definition, one out of every five years is an "unusual" or "abnormal" year.

In order to analyze rainfall during the past three years, the total amount of rainfall during January and February and the totals during rain years 1998-1999, 1999-2000, and 2000-2001 are shown by arrows in Figure X. Based on defining the extreme 20% of values as "unusual," it is apparent that the rainfall at the Beachwood site was normal prior to most observations of ponding. Only the rainfall during February 2000 was unusual – one of the 2 wettest Februarys on record. The other February and January values were within the normal range. In order for the February 1999 rainfall to be considered unusual, 30% of the record would have to be so defined, or nearly one year in three.

In addition to characterizing yearly totals or monthly totals as "unusual," one could characterize particular sequences of daily rainfall in the same manner. For example, referring to Dr. Huffman's observations of ponding on the site on February 5 and 28, 1999, Wetland Research Associates (WRA 1999b) asserted that:

> *"...the rainfall in January 1999 was 137% of normal and during February 1999 was 199% of normal. Over 3.54 inches of rain fell in the 5 days prior to [Dr. Huffman's] early February visit. These extraordinary levels of rainfall are beyond the normal condition used to describe hydric soils. The wetland hydrology indicators observed in the depressions in October 1999 (sic[8]) for this delineation were surface indicators, such as algal mats and sediment deposits. These features probably resulted from the abnormal rainfall events in February and should not be considered the normal conditions."*

Regardless of whether 3.54 inches of rain in 5 days is "abnormal," that particular rainfall event occurred during the period February 6 – 9, <u>after</u> Dr. Huffman's observations (Huffman & Assoc., March 11, 1999) of ponding on the site – not before. WRA's characterization of the observed ponding on February 5, 1999 as being the result of an unusual rainfall event is apparently based on a mistake. Rainfall during the 60 days prior to those observations was not unusual. December was about 51% of average and January was about 121% of average.[9] Therefore, the observation of ponding on February 5, 1999 is compelling evidence that the area had been ponded for a minimum of 6 days (since the last rainfall of .87 inches) and almost certainly for more than 14 days (since the very heavy rainfall during Jan 16 – 20). Without question the area continued to have standing water throughout February and probably long after. Since the soil was saturated to the surface on February 5, the continued ponding observed at the end of the month would certainly have occurred even with only the median rainfall. The difference would have been in the depth and areal extent of the ponds.

A similar pattern of ponding took place in 2000. LSA observed ponding by mid-January and by February 8, 11 areas had standing water 2-18 inches deep. This was before the exceptional

[8] Those observation were actually made on July 27, 1999 and first reported in October 1999.

[9] The differences in the percent of average rainfall figures provided by WRA and calculated here probably reflect small differences in the number of years used in the calculations of the long term mean. Both sets of figures are based on the same NOAA data set.

February rainfall. During the two weeks ending on the day of observations, there were 1.4 inches of rain scattered throughout the period, not an unusual volume. As in 1999, the ponding that was present in early February would undoubtedly have continued to be present throughout the month even in an average rain year. The extraordinary volume of February rainfall no doubt caused the ponds to be bigger and deeper and last even longer.

Ponding was also present in 2001. As in previous years, there was standing water present by the end of January as evidenced by Mr. Ferreira's photographs. The same area was still very moist 3-6" below the surface in early July and there were extensive algal mats on the ground surface. The fact that the ground was still moist in the upper 12 inches in July of both 1999 and 2001 suggests that these areas remain ponded well into the Spring. It is clear from the above analysis that the preponderance of evidence indicates that many of the areas with hydrophytic vegetation on the Beachwood site are ponded for long (7-30 days) or very long (> 30 days) duration during most years.

WRA's revised delineation includes the following analysis (based on examining photographs under magnification) of the frequency and duration of ponding at the site:

> *Additional photographic information was collected for the site including photographs taken on January 24, 1991; March 29, 1995; and February 11, 1999. Rainfall in the 30 days preceding these photographs was 11%, 210%, and 264% of normal, respectively. No ponding was observed in either the 1991 or the 1995 aerial photographs despite the high rainfall prior to the 1995 photo. Isolated ponding was observed in the 1999 aerial photograph; however, this date was preceded by an extraordinary rainfall event of over 3.54 inches of rain in the previous 5 days. This evidence shows that the soils do not, under normal circumstances, pond for a sufficiently long duration to be considered hydric and that the most recently observed hydrologic indicators are the result of extraordinarily high rainfall in early 1999.*

The methodology underlying this analysis is flawed because vegetation can obscure aerial views of shallow standing water, particularly in normal color aerial photographs.[10] Whereas the presence of standing water in such a photograph can be interpreted, the apparent absence of standing water cannot. For this reason, photogrammeters typically rely on multi-spectrum photography, especially infrared, combined with ground truthing when mapping wetlands based on remote sensing data. The Manual of Remote Sensing states:

> *Submerged or emergent vegetation – Vegetation may change bottom reflectance, obscure water surface, or contribute to the spectral characteristics of the measured signal.*
>
> *…Caution must be applied in wetlands areas to adjust appropriately for vegetation obscuring or being mixed in the surface-water area.* (American Society of Photogrammetry 1983)

[10] For such an analysis, large scale color infrared photographs would normally be taken and examined using specialized photo-interpretive techniques; J. Van Coops, CCC Mapping/GIS Program Manager, personal communication.

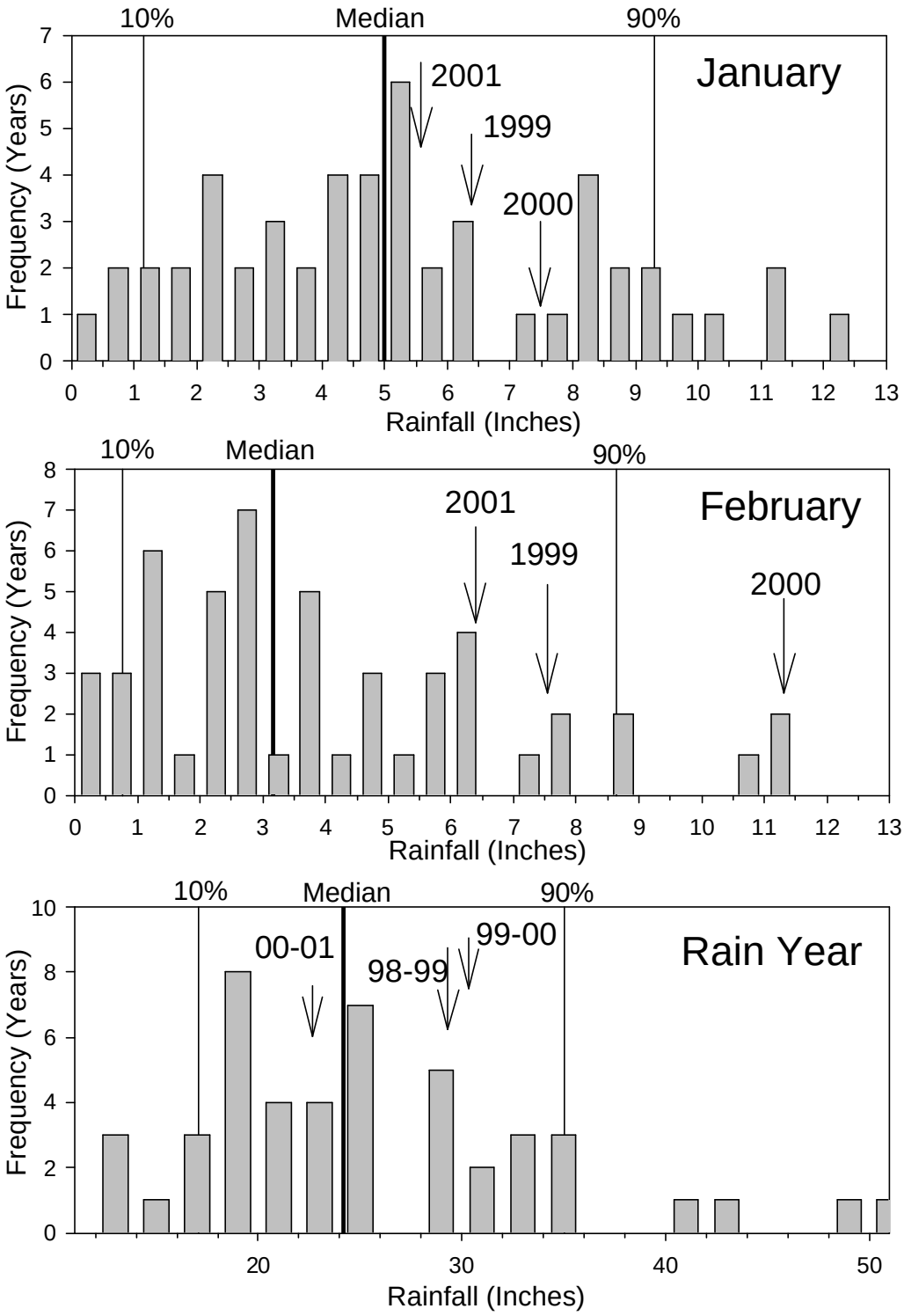

Figure 1.

Frequency distribution of annual rainfall totals at Half Moon Bay for January, February, and the rain year (July 1 – June 30). Rainfall categories (e.g. 1-1.5 inches or 20-22 inches) are on the x-axes. Number of years is on the y-axes. Each bar represents the number of years with total rainfall within the class range. The heavy vertical line is the median. Lighter vertical lines are the 10^{th} and 90^{th} percentiles. The normal range of values falls between the 10^{th} and 90^{th} percentiles.

There is also specific evidence that the results of the WRA photographic analysis are incorrect. LSA examined other portions of the February 11, 1999 photograph that included the adjacent Pacific Ridge property where LSA was making ground observations, finding that:

> *Standing water was present in all of the wetlands on the Pacific Ridge site on February 9. These wetland areas continued to be flooded or ponded into April. Other than the pond on the Pacific Ridge site, no standing water is visible [in the photograph] in any of the other wetlands on the Pacific Ridge site or on the roads where water was also present. All of the shallow ponding is obscured by the low growing grassy vegetation. We assume similar conditions would occur on the Beachwood site where the vegetation is much taller than the grazed lands on Pacific Ridge Project site.* (LSA 2000b)

In addition, there is direct evidence of long or very long duration ponding on the Beachwood site during 2000 when rainfall was about 112% of average, which should not be considered abnormal by any definition.

This evidence of ponding is significant because the City of Half Moon Bay certified LCP, as well as the Commission's implementing regulations, define wetland to include "areas where the water table is at, near or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground." (Appending A; Zoning Code section 18.38.020.) As stated above, in section 1.1.4, vegetation surveys conducted by the applicant's consultants evidence that Areas W1-W17 contain more than 50% of plant that are normally found to grow in water or wet ground. In addition, many these same areas, are also areas where the water table is at, near or above the land surface long enough to bring about the formation of hydric soils. This issue is discussed further in 3.3.6 below.

Conclusion – Hydrology

The Commission finds that wetland hydrology was historically present in many areas of the site. Despite significant alterations of the site's drainage characteristics over the past few decades through farming practices, drainage improvements, and grading of the site, the soils in areas W1-W17 are inundated or saturated for sufficient duration to demonstrate wetland hydrology in accordance with generally accepted wetland delineation protocols.

3.3.6 Soils

As discussed above, the definition of wetlands contained in the Half Moon Bay certified LCP defines wetland to include areas "where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils…" Although neither the Coastal Act or the certified LCP define hydric soils, the National Technical Committee for Hydric Soils (NTCHS) publishes the guidebook Field Indicators of Hydric Soils in the United States (NTCHS 1995). This guidebook defines hydric soils as: "…soils that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part." Besides various morphological characteristics such as low chroma colors[11] or

[11] Chroma" is a characteristic used to describe colors in the Munsell system. It indicates color "strength" and is determined by matching soil samples to special color charts, which is analogous to matching a paint chip from one's

the presence of redoximorphic features,[12] the NTCHS accepts evidence of frequent[13] ponding for long or very long duration[14] during the growing season, as a field indicator of hydric soils.

In most cases, hydric soils are identified based on morphological characteristics such as low chroma colors or the presence of redoximorphic features that form under anaerobic conditions. However, the native soils on the Beachwood site are classified as "mollisols." These soils have dark surface horizons and low chroma colors that are derived from the presence of organic matter rather than from soil saturation. Consequently, low chroma is not a reliable indicator of hydric soils and redoximorphic features are extremely difficult to see. In the context of wetland delineation, these are "problem soils."

However, the accepted field indicators of hydric soils in accordance with the NTCHS Guidebook includes evidence of frequent ponding or flooding for long or very long duration during the growing season (NTCHS Criteria 3 and 4). Use of these indicators to determine if the site contains hydric soils is appropriate since the soil type renders chroma color and redoximorphic soil features unreliable.

For soils to be considered hydric due to frequency of flooding or ponding, they must be saturated to the surface for at least seven consecutive days during the growing season (all year on the California coast) during half of all years, on average. As discussed above, substantial evidence in the record at the time of the city's action in March 2000 denying the CDP application, as well as additional evidence that was not considered by the city at the time of its action, demonstrates long or very long duration ponding on the site in 1999, 2000, and 2001. This evidence of ponding satisfies NTCHS hydric soils Criteria 3.

In fact, the applicant's consultant Dr. Stephen Faulkner states:

> *In the current situation, some may state that hydric soils are present due to Criteria 3 (frequently ponded for long duration). The concept of this criteria as a field indicator requires that the frequency and duration be established."*

The applicant's consultants attempt to dismiss this evidence based on the contention that the observations of ponding in February 1999 and of the field indicators of wetland hydrology observed by WRA in July 1999, were due to abnormal rainfall conditions. However, as discussed above, 1999 was not an unusually wet year. Thus, the soils surface and soil profile indicators of wetland hydrology observed by WRA in July 1999 cannot be discounted. Furthermore, this contention fails to account for the evidence of ponding and soil saturation in 2000 and 2001.

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house to charts found in paint stores. Low chroma can develop in response to the reducing conditions associated with saturated soils.

[12] "Redoximorphic features," such as mottles and concretions, are formed by reduction, translocation, and oxidation of iron and manganese compounds in periodically saturated soils.

[13] "Frequently flooded or ponded" is a frequency class in which flooding or ponding is likely to occur often under usual weather conditions (more than 50 percent chance in any year, or more than 50 times in 100 years); Hurt, G.W., P.M. Whited, and R.F. Pringle, eds. Field indicators of hydric soils in the United States. Version 4.0, March 1998. USDA, Natural Resources Conservation Service.

[14] "Long duration" is a period of inundation for a single event that ranges from 7 days to 1 month, whereas "very long duration" is greater than 1 month; Environmental Laboratory. 1987. Corps of Engineers wetlands delineation manual. Department of the Army, Waterways Experiment Station, Corps of Engineers.

In a letter to the city dated January 29, 2001, Terry Huffman[15] states that the hydric soil criteria were met in areas W1-W14 through evidence of saturation conditions, stating, based on available evidence, that it "it is more probable than not that the soils have soil drainage, permeability, and runoff characteristics which would satisfy the NTCHS hydric soils definition. He elaborated:

> *This opinion is based on the findings that: 1) the soils within the depressional areas have slow to very slow permeability characteristics as a result of grading and compaction; 2) the depressional areas capture storm water due to their low lying landscape position; 3) The depressions impeded surface runoff and cause surface and near surface (0 to 12") water to collect; and 4) it is more probable than not that the multiple sequential periodic nature of coastal rain fall patterns, which occur during normal as well as above normal water years prior to March 21, can continue to recharge the depressional areas sufficiently enough to bring about ponding and or near soil surface saturation for a minimum of seven days.*
>
> *Based on these findings it is my professional judgment after analyzing the data and information provided in Attachment 1 and experience with similar situations within the Half Moon Bay area that the WRA depressional areas contain soils, which due to periodic saturation meet the NTCHS definition of Hydric Soils. The information analyzed indicates that no other areas were found on the subject property, which have hydric soil conditions.*
>
> *In summary, we found the Beachwood Subdivision site to contain areas with a growth of plants and hydric soils conditions described by the LCP definition of wetlands. These include WRA report W1a, W1b, W2 thru 14 (see WRA Figure 12). It should be noted that although these wetland areas are manmade the LCP provided no exclusion for these types of areas within the context of the LCP wetlands definition.*

The Commission staff's biologist also responded to the applicant's contention that there has been insufficient time for hydric soil formation and therefore, the soils here do not meet the hydric soils definition. The Commission's biologist states:

> *In the context of wetland delineation, current conditions which result in frequent saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part of the soil is a sufficient indicator of hydric soils, regardless of whether the conditions have been in effect long enough to create the morphological characteristics generally associated with hydric soil series.*

The Commission is aware that on January 26, 2001, the San Mateo County Superior Court set aside the city's March 21, 2000, denial of the project based on wetland concerns. Based on Several biological reports contained in the record before the Court (specifically, Administrative Record pages 25: 7931-7939, 22: 6713-6724 and 19: 6125-6136) (Exhibit 24), the court found that "None of that evidence supports a findings that hydric soil exists on the site, which is the subject of the LCP definition and exception." The Court also noted that the city's definition is the proper standard of review, and that "Whether the petitioner's property meets the definition of wetlands under the Commission's regulations is irrelevant; the LCP is controlling per PRC 30604(b)."

[15] Dr. Huffman was one of the authors of the Corps 1987 Wetland Delineation Manual.

The Commission agrees that the LCP is the proper standard of review; however the Commission does not agree that the available evidence supports a finding that soils in question are not hydric. Because the Court's ruling is not yet final, the Commission is not bound by it; moreover the Commission has available to it evidence that was not in the record before the court, as well as further review, data gathering, and interpretation by the Commission's biologist. Based on this evidence, the Commission concludes that, based on a preponderance of the evidence, for the reasons stated above, the soils in areas W1a, W1b, and W2 through W14 (Exhibit 4) are hydric and therefore meet the LCP definition of wetlands.

Hydric Soils – Conclusion

Based on the above discussion, the Commission concludes that hydric soils are present in the areas designated as sites W1a, W1b, and W2 through W14 which meet NTCHS hydric soil Criterion 3, an accepted hydric soil indicator (Exhibit 4). These areas therefore qualify as "wetlands" both in an ecological sense and under the definition of the City of Half Moon Bay's certified Local Coastal Program.. Thus, the preponderance of the evidence leads the Commission to the conclusion that the soils in areas W1a, W1b, and W2 through W14 (Exhibit 4) are hydric and meet the LCP definition of wetlands.

3.3.7 Exception for "Vernally Wet Areas without Hydric Soils"

As discussed above, the Half Moon Bay certified LCP includes three separate wetland definitions. These definitions are found in LUP Appendix A, Zoning Code Section 18.02.040, and Zoning Code Section 18.38.020. The first part of the wetland definitions provided in the LUP Appendix A and Zoning Code Section 18.38.020 both state:

> *…Wetland is an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils* ***or*** *to support the growth of plants which normally are found in water or wet ground.* [Emphasis added]

Thus, consistent with the methods used by the Commission, the California Department of Fish and Game, and the U.S. Fish and Wildlife Service, wetlands under the City of Half Moon Bay's LCP may be delineated based on either the presence of hydric soils or hydrophytic vegetation as further discussed above. However, according to LUP Appendix A and Zoning Code Section 18.38.020, wetlands do not include:

- areas which in normal rainfall years are permanently submerged (streams, lakes, ponds, and impoundments),[16]
- marine or estuarine areas below extreme low water of spring tides, and
- vernally wet areas where the soils are not hydric.

Under the Coastal Act and the Commission's regulations, marine or estuarine areas below extreme low water of spring tides are considered estuaries, tidelands, or submerged lands, but not wetlands. Therefore, the second exception under the above-cited LCP sections is consistent with the Commission's definition. However, the first and last exceptions – areas which in normal

[16] This first exception would exclude may shallow fresh water marshes. Indeed, it would exclude all but seasonal wetlands.

rainfall years are permanently submerged and vernally wet areas where the soils are not hydric – are not found in the definition of wetlands used by the Commission.

The applicant takes the position that the LCP excludes vernally wet areas where the soils are not hydric and that the site contains such excluded areas. It is the Commission's position that this exclusion does not include vernally wet areas that contain only hydrophytes. In other words, the exclusion only applies if the area contains neither hydrophytes or hydric soils. See March 20, 2000 letter to City of Half Moon Bay from Ralph Faust, Chief Counsel for the Commission, attached as Exhibit 15. The letter clarifies that since the contested phrase is susceptible to more than one interpretation, the most appropriate interpretation of the exclusion phrase contained in the city's certified LCP is to harmonize the definition in a manner consistent with the definition of wetlands contained in the Coastal Act and its implementing regulations.[17] However, as discussed above, since there is substantial evidence that hydric soils are found at the site, the appropriate interpretation of the exclusion phrase is no longer at issue since the site does not qualify for the exclusion under either the Commission's or the applicant's interpretation.

In addition, a third provision of the LCP defining "wetland" is found in the definitions section of the Zoning Code. Zoning Code Section 18.02.040 states:

> *Wetland: The definition of wetland as used and as may be periodically amended by the California Department of Fish and Game, the California Coastal Commission, and the US Fish and Wildlife Service.*

The exceptions for areas that are permanently submerged and for vernally wet areas that do not contain hydric soils contained in LUP Appendix A and Zoning Code Section 18.38.080 are inconsistent with the wetland definitions used by the California Department of Fish and Game, the Coastal Commission, and the U.S. Fish and Wildlife Service. Consequently, these exceptions are also inconsistent with the wetland definition contained in the definitions section of the Zoning Code. Thus, the LCP is internally inconsistent in its treatment of the term "wetland." The wetland areas on the project site clearly fall within the definition of wetlands used by the California Department of Fish and Game, California Coastal Commission, and U.S. Fish and Wildlife Service, as provided in Half Moon Bay Zoning Code Section 18.02.040.

In addition, even if one were to apply the other definitions of wetlands in LUP Appendix A and Zoning Code Section 18.38.080, the wetland areas on the project site do not fall within the exclusion for "vernally wet areas that do not contain hydric soils." This is both because these areas contain hydric soils (as discussed above) and because these areas do not qualify as "vernally wet areas" within the plain language meaning of that phrase, as discussed further below.

The term "vernally wet areas" is not defined in scientific literature or regulation. Unlike "hydric soils", "vernally wet areas" is not in common use in the field of wetland science or in any statute

[17] In that letter the Commission's Chief Legal Counsel opined that the disputed wetland areas affected by this approved development are wetlands under the LCP. In that letter, the Chief Counsel emphasized that the city's definition of wetlands should be interpreted in a manner consistent with the Coastal Act and its implementing regulations, which do not exclude vernally wet areas which support the growth of plants that normally grow in water or wet soil from its definition of wetlands. Under this interpretation of the wetland definition contained in the certified LCP, since the LCP's definition of wetlands includes areas that support wetland hydrology, hydric soils, or hydrophytes and there is evidence of wetland hydrology and hydrophytes on the site, the areas containing hydrophytes are considered wetlands, even if they do not support the formation of hydric soils (Exhibit #).

or regulation other than the Half Moon Bay and San Mateo County LCPs.[18] Neither LCP provides a definition or any further explanation of the meaning or applicability of the phrase. Nor does the history of the Commission action certifying the LCPs define or clarify the meaning or intended use of this term. The Commission is not aware of any other instances where this exception has been applied.

The only term using the word "vernal" that is used in both wetland science and law (other than in the Half Moon Bay and San Mateo County LCPs) is vernal pond or pool. Vernal ponds are a specific habitat type that supports unique flora and fauna. The wetlands on the Beachwood site do not support any vernal pond species and none of the data in the biological report identifies vernal ponds on this site. Thus, if vernally wet area is defined as a vernal pond, the exception would not apply to any of the wetland areas on the Beachwood site. In fact, the Commission is unaware of the occurrence of any vernal ponds in Half Moon Bay. The Commission therefore finds little support for an interpretation of "vernally wet areas" as meaning vernal ponds.

In the absence of any other definition or guidance, the Commission must first look at the plain meaning of the phrase "vernally wet." The American Heritage Dictionary, New College Edition, defines "vernal" as "Of, pertaining to, or occurring in the spring." Thus, the unambiguous plain English language meaning of the phrase "vernally wet areas" is areas that are wet during the spring season.

In its first wetland delineation, the applicant's consultant (WRA) concludes that although indicators of wetland hydrology and vegetation were present in Areas W3-W17, these areas are not subject to Corps jurisdiction because they are all "related to man-made construction activities" (WRA 1999a). However, as discussed above, WRA's observations of positive indicators of wetland hydrology and plants support a determination that Areas W3-W17 are wetlands as defined by the LCP. In its second wetland delineation, the applicant addresses the LCP definition and invokes the vernally wet area exception to conclude that Areas W3-W17 are not wetlands (WRA 1999b).

In its second delineation report WRA states that: "Vernal means relating to or occurring in the spring." This sentence is followed by the nonsequitur: "Vernally wet areas are therefore those areas that are temporarily wet during winter or spring months." Thus, the applicant proposes that the "vernally wet areas" should be interpreted as meaning areas that are wet during the winter or spring, but that are not wet year round. This interpretation describes the most common hydrologic condition occurring in seasonal wetlands throughout the Coastal Zone. The applicant has not, however, offered any theory explaining why the city would choose the specific term "vernal" instead of the more general term "seasonal." Nor has the applicant advanced a theory as to why if the city had intended to except from the LCP definition of wetlands all seasonal wetlands without hydric soils, it used the unfamiliar phrase "vernally wet areas" instead of the commonly used term "seasonal wetland." The Commission therefore finds no support for the applicant's expansive interpretation of the wetland exception.

Regardless of whether the phrase "vernally wet areas" means areas that are wet during the spring or areas that are seasonally wet, the related exception from the definition of wetlands under the LCP is inconsistent with the Coastal Act. Either interpretation results in failure to delineate as

[18] The San Mateo County LUP was certified in 1982, prior to certification of the Half Moon Bay LUP in 1985. The wetland definition contained in Half Moon Bay LUP Appendix A is taken from San Mateo County LUP Policy 7.14. Both definitions use the exact same language.

wetlands under the LCP areas that are considered wetlands under the Coastal Act as well as by the California Department of Fish and Game and the U.S. Fish and Wildlife Service.

The Commission finds that the exception should be applied in the manner that minimizes inconsistency with the wetland definitions used under the Coastal Act and by these other agencies. This position is supported by Zoning Code Section's 18.02.040 deference to "the definition of wetlands as used… by the California Department of Fish and Game, the California Coastal Commission, and the US Fish and Wildlife Service." Expanding vernally wet to mean seasonally wet as suggested by the applicant only exacerbates the inconsistency with the wetland definition used by the Commission and these other agencies. The basic purpose of the LCP is to carry out and implement at the local level the requirements of the Coastal Act. To use the term "vernally wet" to mean "seasonally wet" would subvert this purpose.

In summary, the Commission finds no support for the expansive interpretation of the phrase "vernally wet" to mean "seasonally wet" in the LCP, the Coastal Act, or under the wetland definitions used by the California Department of Fish and Game or the U.S. Fish and Wildlife Service. Furthermore, the Commission finds that this interpretation maximizes rather than minimizes conflict between the LCP and the Coastal Act. For all of these reasons, the Commission rejects the interpretation proposed by the applicant, and finds that "vernally wet areas" means areas that are wet during the spring, not areas that are seasonally wet.

Here the evidence shows that the site contains seasonal wetlands and not vernally wet areas. As discussed above, during normal rainfall years, areas W3-W14 are ponded or flooded for prolonged periods during the rainy season, beginning in the late fall and continuing through winter into spring. It is for this reason that the Commission has determined that these areas have both wetland soils and hydrology and are therefore wetlands under the LCP. For the same reason, the Commission finds that areas W3-W17 are seasonal wetlands, and not vernally wet areas.

3.3.8 Conclusion – Wetlands

Based on the substantial evidence described above, including new evidence not considered by the city in its action denying the CDP application in March 2000 or by the court in its ruling on the petition for the writ of mandate (e.g. observations of ponding in 2000 and 2001, observation of wet soil in July 2001, examination of the April 1999 color infrared aerial photo of the site, and review of recent and historical rainfall records) the Commission finds that all three wetland parameters occur in Areas W1-W14. As stated above, in section 3.1.4, vegetation surveys conducted by the applicant's consultant provides evidence that Areas W1-W17 contain more than 50% vegetation cover that is facultative wet and obligative species. As such, areas W1-W17 qualify as wetlands under the certified LCP because they are areas where the water table is at near or above the land surface long enough to support the growth of plants which normally are found to grow in water or wet ground. In addition, as stated above in section 3.1.6, W1-W14, are also areas where the water table is at, near or above the land surface long enough to bring about the formation of hydric soils. Furthermore, the Commission rejects the applicant's contention that Areas W3-W17 are not wetlands under the LCP based on the exception for "vernally wet areas where the soils are not hydric," both because Areas W3-W14 have hydric soils and because all of the wetland study areas are seasonal wetlands not vernally wet areas. Therefore, the Commission finds that Areas W1-W17 are wetlands in accordance with the Half Moon Bay LCP.

As proposed, the development would grade and fill the wetlands identified in Areas W3-W17 for roads, utilities, and building pads, and would create lots for single-family homes in these wetlands. Therefore, as proposed, the development is inconsistent with wetland protection policies and standards including Zoning Code Section 18.38.080 and LUP Policies 3-2, 3-3, 3-4, 3-9, 3-11, 3-12 and 3-22. These policies prohibit any uses that would have significant adverse impacts on sensitive habitat areas (including wetlands), require any development in areas adjacent to sensitive habitats to be sited and designed to prevent impacts that could significantly degrade the sensitive habitats, require, at a minimum, a 100-foot buffer from wetlands, ponds, and other wet areas, and restrict uses within buffer zones.

In addition, pursuant to LUP Policy 1-1, the Commission notes that the city has adopted the Chapter 3 Policies of the Coastal Act as guiding policies of the LUP. Accordingly, the city's LUP adopts Coastal Act Section 30233, which prohibit residential development in wetlands. Under these LCP policies, all but approximately 19 of the proposed 77 residential lots would be inconsistent with LCP policies protecting wetlands and buffer areas.

Therefore, the proposed subdivision could be denied because it is inconsistent with the LCP policies and standards governing protection of wetlands. However, as an alternative to denial, the Commission imposes Special Condition 1. This condition limits the creation of residential lots to the western portion of the parcel, which does not contain wetlands. Special Condition #1 provides the applicant with two alternative ways to achieve the required elimination of wetland and wetland buffer lots. One way would be to submit to the Executive Director a revised tract map, based on that approved by the City of Half Moon Bay, maintaining the non-wetland parcels as currently proposed to be configured, while showing elimination of the remaining proposed lots and improvements in wetland and associated buffer areas. Under this alternative, one of the most eastern lots that is allowable must include the balance of the property containing the wetland and wetland buffers. The second way would be to submit a wholly new tract map, for Commission review, locating proposed residential lots wherever wetlands or buffers would be avoided. Under this alternative the applicant is free to reconfigure their proposed subdivision in a manner that protects the resources as specified in the condition.

The Commission also imposes Special Condition 2 requiring the applicant to execute and record a deed restriction over the wetland and wetland buffer areas identified on Exhibit 7 for resource protection and habitat conservation for these areas. The Commission finds that as conditioned, the proposed development is consistent with LCP Zoning Code Section 18.38.080 and LUP Policies 3-2, 3-3, 3-4, 3-9, 3-11, 3-12 and 3-22, and Coastal Act/LUP Policy 30233.

3.4 Environmentally Sensitive Habitat

Threatened or endangered species (red-legged frogs and San Francisco garter snakes), and raptors found in the project area may use the project site as habitat, particularly in the southeastern corner of the site. Given that the applicant is proposing to protect this corner of the site, and the conditions of approval above for the protection of wetlands further limit development in this area, as conditioned the project would not adversely affect environmentally sensitive habitat areas.

3.4.1 LCP Policies

Policies 3-2, 3-3, 3-4, 3-9, 3-11, 3-12 and 3-22 quoted in the previous section of this report require the protection of environmentally sensitive habitat areas. This section of the report addresses the project's impacts to rare, threatened and endangered species found in the project area. To assist in the implementation of these resource protection policies, the LCP provides:

Zoning Code Sec. 18.38.035 Biological Report.

A. When Required. The Planning Director shall require the applicant to submit a Biological Report, prior to development review, prepared by a qualified Biologist for any project located in or within 100 feet of any Sensitive Habitat Area, Riparian Corridor, Bluffs and Seacliff Areas, and any Wetland…

B. Report Contents. In addition to meeting the report requirements listed in Section 18.35.030, the Biological Report shall contain the following components:

1. Mapping of Coastal Resources. The Biological Report shall describe and map existing wild strawberry habitat on the site, existing sensitive habitats, riparian areas and wetlands located on or within 200 feet of the project site.

2. Description of Habitat Requirements.

a. For Rare and Endangered Species: a definition of the requirements of rare and endangered organisms, a discussion of animal predation and migration requirements, animal food, water, nesting or denning sites and reproduction, and the plant's life histories and soils, climate, and geographic requirements;

b. For Unique Species: a definition of the requirements of the unique organism; a discussion of animal food, water, nesting or denning sites and reproduction, predation, and migration requirements; and a description of the plants' life histories and soils, climate, and geographic requirements.

C. Distribution of Report. Any Biological Report prepared pursuant to this Title shall be distributed to the US Fish and Wildlife Service, the Army Corps of Engineers, the California Coastal Commission, the State Department of Fish and Game, the Regional Water Quality Control Board, and any other Federal or State agency with review authority over wetlands, riparian habitats, or water resources.

1. The Biological Report shall be transmitted to each agency with a request for comments from each agency with jurisdiction over the effected resource on the adequacy of the Report and any suggested mitigation measures deemed appropriate by the agency.

2. Included within the transmittal of the Biological Report to the various agencies shall be a request for comments to be transmitted to the Planning Director within 45 days of receiving the Report.

3.4.2 Discussion

LUP policy 3-3 and 3-5 and Zoning Code Section 18.15.035, quoted above, which implements these policies, require a Biologic Report to identify sensitive resources. The Biological Report for the locally approved project contains a report by Harding Lawson Associates, entitled *San Francisco Garter Snake Survey and Riparian Mitigation Plan, Beachwood Subdivision, Half Moon Bay*, which analyzes the habitat value of the site for the snake. However, this survey was performed in 1989 and did not include live trapping. The only survey of the site conducted for the San Francisco garter snake was prepared for the applicant and conducted in 1989 by Harding Lawson Associates. The Biological Report for the approved project did not include surveys for the red-legged frogs or raptors (other than a letter from a wildlife biologist that states that, in the biologist's opinion, the area does not support the red-legged frogs (biologist Jeffery B. Froke, Ph.D., March 10, 1999). The letter does not appear to be based on scientific surveys or trapping.) Thus, the conclusions of the biological report, with respect to the frog, were based on a simple walk through of the project site. There does not appear to be any detailed habitat surveys or attempts at identifying individual frogs. In addition, the U.S. Fish and Wildlife Service indicated that these species are extremely difficult to detect and that a simple transect survey is not sufficient to document the presence or absence of the snake (pers. com. Larson 6/16/00). A U.S. Fish and Wildlife Service letter (dated March 11, 1999, Exhibit 20) suggests the possibility of the site providing habitat for sensitive species:

> *Due to the presence of ponded water and chorus frogs, the Service suggests that a wetland delineation be conducted for the entire site. To avoid possible take of listed species, the Service suggests that the developer hire a qualified biologist to conduct surveys for the red-legged frog and the garter snake.*

The Commission requested additional biological information from the applicant, because without a complete and up-to-date biological report, the Commission is unable determine if the project would affect these habitat resources or whether the project is consistent with the LCP's habitat policies.

In addition, the project site might provide habitat for raptors. The area includes open grasslands and tall eucalyptus trees that are suitable for raptor roosting and foraging. In addition, the site immediately east of the Beachwood property, the Ailanto subdivision, supports raptors. In its review of the coastal development permit for the Ailanto subdivision, in order to find the proposed project consistent with the standards of the certified LCP, the Commission required mitigation for impacts to those raptors. The Half Moon Bay LCP defines raptors as a unique species, and thus their habitat is an ESHA.

The applicant has responded with the following analysis supplementing its biological report. [19] The following discussion analyzes this supplemental information.

[19] The applicant also maintains that the U.S. Fish and Wildlife service letter quoted above (and attached as Exhibit __) was written in reference to a different project than the Beachwood project. However, the applicant does not explain the basis for this conclusion, and the report does appear to have been written directly about the Beachwood project.

3.4.3 San Francisco Garter Snake

The San Francisco garter snake is a federal and state listed endangered species. The San Francisco garter snake's preferred habitat is densely vegetated ponds near open hillsides where it can sun itself, feed, and find cover in rodent burrows. The species is extremely shy, difficult to locate and capture, and quick to flee to water when disturbed. On the coast, the snake hibernates during winter in rodent burrows, and may spend the majority of the day during the active season in the same burrows.

California red-legged frogs are an essential prey species to the San Francisco garter snake, and the snakes have not typically been found in areas where red-legged frogs are absent. In addition, newborn and juvenile San Francisco garter snakes depend heavily on Pacific tree frogs. Adult snakes may also feed on juvenile bullfrogs. The decline of this species is due principally to habitat loss, the loss of red-legged frog, illegal collection, and the introduction of bullfrogs. Adult bullfrogs prey on both San Francisco garter snakes and California red-legged frogs.

According to the applicant's biologist, it is unlikely that the San Francisco garter snake occurs on the Beachwood site (Josselyn and Dreier, March 2001). Specifically, the applicant's biologist states the following:

> *San Francisco garter snakes are unlikely to occur at the artificial wetlands at the Beachwood site because:*
>
> - *The project site is not within the existing occupied range of the snake.*
> - *Existing habitat on site is unlikely to support San Francisco garter snakes.*
> - *Migration corridor to site is absent and there are numerous barriers to migration.*
> - *Ranid frogs appear to be absent.*
> - *Previous garter snake surveys and assessments in vicinity of project site suggest SFGS is not present.*

Even though the applicant suggests that the Beachwood site does not provide habitat for the San Francisco garter snake, the Commission remains concerned that the area may provide some habitat for the snake, especially the historic agricultural pond in the southeast portion of the site. The Commission recently approved a coastal development permit for a subdivision just east of the Beachwood site (Ailanto, A-1-HMB-022). In reviewing that permit, the Commission found that the site provides habitat for the San Francisco garter snake. Specifically the Commission found that:

> *The U.S. Fish and Wildlife Service Biological Opinion determined that the project site provides … potential habitat for San Francisco garter snakes. Staff of the U.S. Fish and Wildlife Service indicates that documenting the presence of this species is extremely difficult to detect and that a simple transect survey is not sufficient to document the presence or absence of the snake (pers. com. Larson 6/16/00). Both the San Francisco garter snake and the California red-legged frog are extremely rare and shy and quickly seek cover when approached. This position is supported by the findings contained in Balfour's January 15, 2001 report, as cited above.*

Based on the Fish and Wildlife Service's analysis, the Commission found the Ailanto property to provide habitat for this endangered species and found that these suitable areas are

environmentally sensitive habitat areas (ESHA). Based on the information provided by the applicant, the habitat on the Beachwood site is not likely to provide habitat for the San Francisco garter snake. However, the Commission is concerned over any potential habitat losses, even if the area provides only marginal habitat. In its Biological Opinion for the Ailanto project, the Service stated that loss of habitat was one of the primary threats that lead to the listing of the San Francisco garter snake (USFWS, 1998). The pond on the Beachwood site provides, at a minimum, potential habitat for the snake. Because the snake is reclusive, it is possible that they are using this area even though it has not been identified on site. Therefore, because of its potential value for this species and its proximity to other potential snake habitat, the Commission finds the pond to be ESHA for the San Francisco garter snake.

3.4.4 California Red-legged Frog

The California red-legged frog is a federally listed threatened species. California red-legged frogs have been extirpated or nearly extirpated from over 70 percent of their former range and are federally listed as threatened. Habitat loss, competition with and direct predation by exotic species, and encroachment of development are the primary causes for the decline of this species throughout its range. The remaining populations are primarily in central coastal California and are found in aquatic areas that support substantial riparian and aquatic vegetation and lack non-native predators. The project site is located within the Central Coast Range Recovery Unit for the California red-legged frog as defined in the federal listing for this species.

As part of the Biological Report for the proposed project, the applicant concludes that habitat on the Beachwood site is not suitable breeding habitat for the frog. The primary constituent elements for the frogs include suitable aquatic habitat, associated uplands, and suitable dispersal habitat connecting suitable aquatic habitats. The applicant's biologist submitted a habitat assessment for the California red-legged frog. The biologist concluded that the Beachwood site, in particular the agricultural pond, does not provide suitable aquatic or upland habitat, but does provide suitable dispersal habitat (Josselyn and Dreier, 2001). The biologist concluded that the pond is not suitable aquatic habitat because it probably does not provide sufficient ponding duration to support full metamorphosis, which is defined as slow or ponded water with a depth of eight inches during the entire tadpole rearing season (at least March through July). In addition, the adult frogs require deep aquatic habitat, which the Service defines as greater than 0.7 meters (Federal Register, 1996). Therefore, the Commission agrees that the shallow agricultural pond is unlikely to provide breeding habitat for the California red-legged frog.

However, the Commission disagrees with the biologists conclusion that the area does not provide suitable upland habitat. The applicants California red-legged frog habitat assessment defines the frog estivation habitat as limited to mammal burrows, and then states that the site has been regularly disturbed by rough grading and implies that there are no mammal burrows on site (Josselyn and Dreier, March 2001). First, the site was last graded *** years ago and it is very likely that mammals have made burrows in the area. The applicant's own raptor survey states the following:

> *The project site contains populations of small mammals and snakes: several California meadow voles (Microtus califonicus) and common garter snakes (Thamnophis sirtalis) were seen during the surveys. Although the hawks were not seen actively foraging over the project site during our field visits, there is a suitable prey base for foraging.* (Wetland Research Associates, Inc., July 2001.)

This seems to indicate that there is a large mammal population (at least large enough to support raptor foraging) on the site and would also indicate that there are mammal burrows to support frog estivation. In addition, the Commission disagrees with the conclusion that the estivation habitat is limited to mammal burrows. In listing the California red-legged frog, the Service described the frog's estivation habitat as follows:

> *California red-legged frogs estivate in small mammal burrows* ***and moist leaf litter*** *(Jennings and Hayes 1994b).* (emphasis added, Federal Register, 1998.)

The area near the pond contains several eucalyptus trees that would likely provide leaf litter. Additionally, a storm drain for the Terrace Avenue assessment district drains areas east of the project site. Drainage water ponds in this area, some of which has been identified as wetlands. Additionally there are several ponds located on the adjacent Ailanto property that have been identified by the Service as suitable California red-legged frog habitat. The Commission subsequently found these ponds to be ESHAs because of their value as California red-legged frog habitat. The closest pond is 0.3 of a mile from the Beachwood pond, well within the area a frog would move to. The applicant's frog habitat also identifies the area as suitable dispersal habitat. Therefore, the Commission finds that the agricultural pond on the project site is likely to support California red-legged frog and is an ESHA.

3.4.5 Raptors and Other Sensitive Species

The Half Moon Bay LCP identifies raptors as a unique species, and its habitat is a type of ESHA pursuant to the LCP. In response to the Commission's request, the applicant conducted a raptor survey of the site and identified a possible red-tailed hawk nest within the site and a great horned owl nest adjacent to the site (Wetland Research Associates, Inc., July 2001.) As described above, they also identified suitable raptor foraging habitat on site. The raptor nests are located on the southeast corner of the site, near the agricultural pond and other identified wetlands.

3.4.6 Conclusion

While the applicant maintains the project site does not provide suitable San Francisco garter snake or red-legged frog habitat, the Commission believes, for the reasons stated above, that at least the southeast corner of the site provides habitat or potential habitat for these species. The applicant is proposing a 100 feet buffer from the acknowledged wetlands in the southeast corner of the site. As conditioned to further limit development to the western portion of the site to protect wetlands, these species are afforded further protection. Therefore, as conditioned, to protect wetland impacts and limit development to the western portion of the site (the area least likely to contain suitable ESHA habitat), the Commission finds the project, as conditioned, complies with the ESHA policies of the City's LCP.

3.5 Traffic and Public Access

The Commission requires the applicant to retire the development rights of 24 existing legal lots in the Mid-Coast Region to offset the significant adverse cumulative impacts of the proposed subdivision to coastal access due to increased traffic congestion on Highways 1 and 92.

3.5.1 Issue Summary

Road access to the Mid-Coast region of San Mateo County including the City of Half Moon Bay and the portion of the California coast within this region is limited to Highways 1 and 92. Studies show that the current volume of traffic on these highways exceeds their capacity and that even with substantial investment in transit and highway improvements, congestion will only get worse in the future. As a result, the level of service on the highways at numerous bottleneck sections is currently and will in the future continue to be rated as LOS F[20]. LOS F is defined as heavily congested flow with traffic demand exceeding capacity resulting in stopped traffic and long delays. This level of service rating system is used to describe the operation of both transportation corridors as well as specific intersections. LOS F conditions are currently experienced at certain intersections and at bottleneck sections of both highways during both the weekday PM peak-hour commuter period and during the weekend mid-day peak. The LCP contains policies that protect the public's ability to access the coast. Because there are no alternative access routes to and along the coastline in this area of the coast, the extreme traffic congestion on Highways 1 and 92 significantly interferes with the public's ability to access the area's substantial public beaches and other visitor serving coastal resources in conflict with these policies.

Without any new subdivisions, there are approximately 2,500 existing undeveloped small lots within the City. Each of these lots could potentially be developed with at least one single-family residence. Even with the City's Measure A 3-percent residential growth restriction in place, this buildout level could be reached by 2010. If the Measure D one percent growth restriction approved by Half Moon Bay voters in November 1999 is implemented through an amendment to the LCP (litigation challenging the measure is currently pending), the rate of buildout would be slowed, but neither of these growth rate restrictions change the ultimate buildout level allowed.

In addition to the fact that capacity increases to the highways are constrained both legally and physically, there is a significant imbalance between housing supply and jobs throughout the region. The County's Congestion Management Plan (CMP) concludes that a major factor contributing to existing and future traffic congestion throughout the County is the imbalance between the job supply and housing (CCAG 1998). In most areas of the County, the problem is caused by a shortage of housing near the job centers, resulting in workers commuting long distances from outside the County. In these areas, the CMP recommends general plan and zoning changes designed to increase the housing supply near the job centers of the County. In the Mid-Coast area of the County however, the problem is reversed. In accordance with the projections contained in the CMP, buildout of the currently existing lots within the City of Half Moon Bay would exceed the housing supply needed to support jobs in the area by approximately 2,200 units, contributing to significantly worse congestion on the area's highways. Simply put, the capacity of the regional transportation network cannot feasibly be increased to the level necessary to meet the demand created by the development potentially allowable under the City and the County land use plans.

[20] Traffic analysis is commonly undertaken using the level of service rating method. The level of service rating is a qualitative description of the operational conditions along roadways and within intersections. Level of service is reported using an A through F letter system to describe travel delay and congestion. Level of service (LOS) A indicates free-flowing conditions. LOS E indicates the maximum capacity condition with significant congestion and delays. A LOS F rating indicates traffic that exceeds operational capacity with unacceptable delays and congestion.

The most recent Countywide Transportation Plan predicts far greater congestion on these two corridors by 2010, stating "in 2010 the most congested corridor [in San Mateo County] will be Western 92" (C/CAG 2000). This report projects increases in the traffic volumes of 197- and 218-percent on Highways 1 and 92 respectively in the Mid-Coast region, and attributes these increases to "the anticipated levels of new development on the Coastside and the continued pattern of Coastsiders out-commuting to jobs in San Francisco and on the Bayside." This latest report serves to corroborate and underscore the findings of all of the previous traffic studies conducted in the region over the past three decades that Highways 1 and 92 in the Mid-Coast Region are not adequate to serve either the current or the expected future demands of development.

The Half Moon Bay LCP specifies that new development shall not be permitted in the absence of adequate infrastructure including roads. LUP Policy 9-2 states in relevant part:

> ***No permit for development shall be issued unless a finding is made that such developmen****t will be served upon completion with water, sewer, schools, and* ***road facilities****…* [Emphasis added.]

LUP Policy 9-4 states in relevant part:

> *Prior to issuance of a development permit, the Planning Commission or City Council shall make the finding that adequate services and resources are available to serve the proposed development…* ***Lack of available services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the land use plan.*** [Emphasis added.]

LUP Policy 10-4 states:

> *The City shall reserve public works capacity for land uses given priority by the Plan, in order to assure that all available public works capacity is not consumed by other development and control the rate of new development permitted in the City to avoid overloading of public works and services.*

The LCP also adopts Coastal Act Section 30252 as a guiding policy, which states in relevant part:

> *The location and amount of new development should maintain and enhance public access to the coast….*

In light of the inescapable fact that there is not adequate highway capacity to serve even the existing level of development in the region, the question that is squarely before the Commission in considering the proposed subdivision is whether the applicant's request to create 77 new legal lots can be permitted consistent with the certified LCP policies. Because there are no alternative access routes to and along the coastline in this area of the coast, the extreme traffic congestion on Highways 1 and 92 significantly interferes with the public's ability to access the area's substantial public beaches and other visitor serving coastal resources in conflict with these policies. The Commission finds that any increase in legal lots in the Mid-Coast Region will result in significant adverse project-specific and cumulative impacts to public access, and would therefore be inconsistent with the Half Moon Bay LCP. However, although the Commission could deny the proposed subdivision because it is inconsistent with certified LCP policies, the significant adverse cumulative impacts to highway congestion and public access to and along the

coast in the Mid-Coast region of San Mateo County associated with new residential subdivisions can be offset by retiring the development rights on existing legal lots in the region equivalent to the number of new lots being created.

The applicant has proposed to minimize the impacts of the proposed development to area traffic through several measures (Exhibit 11), including: (1) improving the intersection of Highway 1 and Bayview Drive, including widening Highway 1 with right turn lanes out of and into the Beachwood subdivision (and including possible "fair share" costs along with nearby subdividers of a traffic signal light at Highway 1 and Bayview Dr., at such time Caltrans considers such signal necessary), in accordance with City and Caltrans standards; (2) payment of "standard traffic mitigation fees; (3) prohibiting driveway access directly to Bayview Dr.; (4) that curbs, gutters, sidewalks and street lights shall be designed in accordance with City standards payment of funding to install a traffic signal on Highway 1 where it intersects with the access road proposed to the development and to widen an 800-foot portion of Highway 1 near this intersection.

The applicant's transportation consultant has provided data showing that existing conditions are that Highway 1 and Bayview, Highway 1 and Grandview, and Highway 1 and Route 92, already operate at LOS F during weekday and weekend peak periods. The consultant further states the project's impacts would be less than significant (significance is defined as LOS changes of < 0.02%), assuming highway and intersection improvements contemplated by the City, one of which is the construction of Foothill Blvd. These transportation improvements, however, would likely be constructed in any event, although if the applicant provides funding, it may accelerate their implementation. Also, the infrastructure improvements the applicant proposed are all in Half Moon Bay, and so these local improvements would not mitigate the project's impacts on congestion outside of the city limits at all. The regional project-specific and cumulative impacts, which impede public access to the coast, are of greater concern than impacts that are limited to Half Moon Bay.

Although the applicant has proposed to mitigate their traffic impacts through the provision of an in-lieu fee, the applicant has not demonstrated that these funds would be spent in a manner that would in any way lessen the traffic impacts of the project or offset the significant adverse cumulative impacts of anticipated development to coastal access. In fact, the regional transportation studies demonstrate that no level of investment in transportation system improvements is adequate to avoid increased congestion on Mid-Coast Highways 1 and 92. The San Mateo County Countywide Transportation Plan shows that even with the maximum investment of $3.2 billion in highway and transit improvements, the regional level of service on Highways 1 and 92 will be significantly worse by 2010 than the current levels.

The regional transportation studies conducted over the last 20 plus years clearly and consistently demonstrate that the area highways cannot support the current level of development and that anticipated growth will result in even greater traffic congestion despite billions of dollars of transportation system expenditures. Therefore, the Commission finds that adequate infrastructure is not available to serve the proposed development, as required by the Half Moon Bay LCP and that the mitigation proposed by the applicant is inadequate to offset these impacts. Furthermore, the Commission finds that the regional cumulative traffic impacts of the proposed development would significantly interfere with the public's ability to access the coast, in conflict with Coastal Act Policies 30210, 30250(a) and 30252, all of which are incorporated as policies of the certified Half Moon Bay LUP. Accordingly, the proposed development could be denied.

As an alternative to denial, and as discussed further below, the Commission concludes that a condition requiring the proportional retirement of lots in the Mid-Coast region is essential to achieve consistency of the project with the Half Moon Bay LCP and therefore imposes Special Condition __requiring the applicant to extinguish the development rights on the number of existing legal lots in the San Mateo County Mid-Coast region equivalent to the number of new lots created consistent with the wetland protection provisions identified above. Only by conditioning the permit to require the applicant to retire existing legal lots to offset the growth related to the proposed creation of new lots can the Commission find the proposed development consistent with the Half Moon Bay LCP.

3.5.2 LCP Standards

The LCP allows new development only if road and other services are adequate.

The City of Half Moon Bay LCP contains policies requiring adequate road capacity to serve new development and to minimize impacts of development to traffic on Highways 1 and 92. LUP Policy 9-2 specifies that new development shall not be permitted unless it is found that the development will be served upon completion with road facilities. LUP Policy 9-4 requires that development shall be served with adequate services and that lack of adequate services shall be grounds for denial of a development permit or reduction in the density otherwise allowed under the LUP. Policy 10-4 states that the City shall reserve public works capacity for priority land uses including public access and recreation from consumption by other non-priority uses such as residential development. LUP Policy 10-25 designates LOS C as the desired level of service on Highways 1 and 92 except during the weekday and weekend peak-hours when LOS E may be accepted.

In addition, pursuant to LUP Policy 1-1, the City has adopted the Chapter 3 policies of the Coastal Act as the guiding policies of the LUP. Accordingly, the City's LUP adopts Coastal Act Sections 30210, 30250 and 30252, which also require that development shall not interfere with the public's ability to access the coast and shall only be approved in areas with adequate public services.

3.5.3 Regional Transportation Setting

Road access to Half Moon Bay and the San Mateo County Mid-Coast region is already overwhelmed and capacity increases are severely constrained.

The City of Half Moon Bay and its coastline can only be accessed via Highway 1 from the north and south and by Highway 92 from the east (Exhibits 1 & 22). Capacity increases to these roadways are constrained both legally and physically.

Highway 1 Corridor

Coastal Act Section 30254 states that it is the intent of the legislature that in rural areas, Highway 1 shall remain a scenic two-lane road. This Coastal Act policy is implemented through the San Mateo County LCP both to the north and to the south of the City, outside the City Limits.

The Highway 1 corridor is currently overwhelmed at peak times. The maximum capacity of the Highway 1 corridor (LOS E)[21] is approximately 2,500 vehicles per hour. Any volume greater than 2,500 vehicles per hour is considered an undesirable level of service F. Currently, the corridor carries approximately 3,120 vehicles during the weekday PM peak-hour and 3,000 vehicles during the Saturday midday peak-hour. Thus, the corridor operates at LOS F at these times.

While the corridor may be improved in the future, the potential for increased capacity is limited, especially outside of Half Moon Bay. Approximately 10 miles north of the City, in San Mateo County, Highway 1 passes through the "Devil's Slide" area, where landslides cause frequent interruptions and occasional closures during the rainy season. Caltrans is currently seeking necessary approvals to construct a tunnel to by-pass Devil's Slide. While the tunnel will improve operations of the highway in the section by preventing slide-related delays and closures, the width of the tunnel will only allow one lane in each direction consistent with Coastal Act Section 30254. Construction of additional lanes to provide additional capacity is therefore not an option in the Devil's Slide area. (The Coastal Commission approved San Mateo County LCP Amendment 1-96 on January 9, 1997 providing for the tunnel alternative.)

The Highway 1 right-of-way provides sufficient width for a four-lane roadway throughout the City of Half Moon Bay. South of Miramontes Point Road, Highway 1 has a rural character with one lane and a graded shoulder in each direction. It varies in width between two and four lanes between Miramontes Point Road and Kelly Avenue. North of Kelly Avenue, it includes two lanes in each direction separated by a raised median before returning to one lane in each direction north of North Main Street. The intersections of Highway 1 with North Main Street, Highway 92, and Kelly Avenue are controlled with traffic signals. The intersections of Highway 1 with minor roadways, including the proposed project site access Terrace Avenue, are controlled with stop signs on the minor street approaches. The roadway widens at unsignalized intersections to accommodate a 12-foot left turn lane. However, because of the heavy traffic congestion on Highway 1 during peak hours, significant delays occur for left turn movements into and out of these unsignalized minor street intersections.

In the beginning of the year 2000, the City began drafting a Project Study Report (PSR) for submittal to Caltrans to study an approximately $3 million improvement plan for the approximately 3,000-foot section of Highway 1 between North Main Street and Kehoe Avenue. On June 20, 2000, the City Council considered eight alternatives for this improvement project. The improvements contemplated included widening the remaining two-lane portions of this section of the highway to four lanes, consolidating intersections, and improving bicycle and pedestrian safety. Under this plan, Bayview Drive would serve as the consolidated, arterial street to serve the existing and planned neighborhoods in this area of the City inland of Highway 1 with a signalized intersection. The other intersections north of North Main would remain unsignalized and restricted to right turning traffic. The City anticipated that the San Mateo County Transportation Authority (SMCTA) would provide substantial funding for these improvements.

[21] See Footnote 1

The City recently began studies to determine if signal warrants are met for the currently unsignalized Highway 1 intersections at Grandview Avenue, Roosevelt Boulevard, Mirada Road, and Filbert Street. Caltrans recently determined that a signal is warranted at the Ruisseau Francaise/Highway 1 intersection.

Highway 92 Corridor

Highway 92 runs east of the City to Highway 280 traversing steep rugged terrain. Here too, there is some potential for increased capacity within Half Moon Bay, but there is little basis for concluding that the severe congestion outside of the city will be alleviated. Because of the steep slopes, slow-moving vehicles delay eastbound traffic. In accordance with the LUP, the capacity of this highway is 1,400 vehicles per hour (in each direction of travel). Currently, the Highway 92 corridor carries approximately 1,976 vehicles during the weekday PM peak-hour and 1,800 vehicles during the Saturday midday peak-hour. Given the characteristics of this roadway, including its steep slopes and curves, this traffic volume results in levels of service F during the weekday peak and nearly F during the weekend peak.

In 1989, the voters of San Mateo County passed Measure A, a 1/2 cent sales tax initiative to provide funds for transportation improvements within the County.[22] Operational and safety improvements to Highway 92 from Highway 1 to Highway 280 were included as part of the Measure A program. Improvements were subsequently divided into four separate construction packages. Construction was recently completed on the first segment to go into construction, the section of Highway 1 from Pilarcitos Creek south of the City to Skyline Boulevard (Highway 35). The other three segments include Highway 92 improvements within the City and in the County area east of the City limit. This project has been divided into two phases. The City will construct Phase 1 and the SMCTA will construct Phase 2.

Phase 1 of the Half Moon Bay Highway 92 improvement project addresses the western segment of the highway within the City. The Phase 1 improvements include widening portions of Highway 92 from two to four lanes, intersection improvements, and improved bicycle and pedestrian safety . The City will enter into a cooperative agreement with Caltrans for final design and construction for the Phase 1 project. In 1998, the City entered into an agreement with the SMCTA for additional funding for the Phase 1 portion of the project. Funding for Phase 1 includes $3.97 million from the State, $4.92 million from SCMTA and $0.82 million from the City. The City expects to complete Phase 1 by 2002.

Phase 2 follows Highway 92 from approximately 2,230 feet east of Main Street to the City limit line and will be constructed by the SCMTA. Phase 2 will include widening the remaining portion of the highway to the City limit line to provide one standard 12-foot lane and an 8-foot outside shoulder in each direction.

The Phase 1 and 2 improvements will improve traffic flow along this segment within the City consistent with the Circulation Element of the City's General Plan. The improvements will not, however, improve the bottlenecks on Highway 92 east of the City that interfere with the public's ability to access the coast from inland areas. On May 11, 2000, the City Planning Commission certified a mitigated negative declaration (MND) and approved a coastal development permit for

[22] Unrelated to the City of Half Moon Bay Residential Growth Initiative also known as Measure A.

the Phase 1 Highway 92 improvements within the City. The MND finds that the project will bring this portion of the Highway 92 corridor within the City Limits to an acceptable level of service under the LCP (LOS C or better). The Planning Commission's approval of this project was appealed to the City Council. The City Council rejected the appeal, granting the final local approval for the project on July 16, 2000. The City's approval was not appealed to the Coastal Commission.

Construction was recently completed of an uphill-passing lane on the segment of Highway 92 east of the City. In addition, the SCMTA is preparing plans for a widening and curve correction project from Pilarcitos Creek to the proposed Foothill Boulevard. This project will include widening of existing lanes and curve corrections to improve safety, but the steep and rugged terrain and proximity to stream corridors prohibit widening the roadway to provide additional lanes east of the City Limits. Thus, while the proposed lane widening and curve corrections will improve the flow of traffic through this corridor, it is not feasible to increase capacity through further lane additions to the segment of Highway 92 between the City limit line and Highway 280 to the east.

3.5.4 Regional Growth Projections

Regional growth projections for Half Moon Bay and the San Mateo County Mid-Coast region predict growth that will exceed the capacity of the transportation system.

Cumulative impact analysis is based on an assessment of project impacts combined with other projects causing related impacts (14 CCR § 15355). In accordance with CEQA, cumulative impact analysis must consider reasonably foreseeable future projects or activities. The CEQA guidelines identify two sources of data that can be consulted for the purpose of evaluating the significant cumulative impacts of development (14 CCR § 15130(b)):

(1) Either:

(A) A list of past, present and probable future projects producing related or cumulative impacts, including those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general or related planning document or in a prior environmental document which has been adopted or certified, which describes or evaluates regional or area wide conditions contributing to the cumulative impact. [Emphasis added.]

The applicant's traffic study (Sept. 25, 1998, TKJM Consultants) is based on a list of the following projects to project future development for its assessment of cumulative project impacts to traffic (list obtained from Draft EIR for Coastside Community Park):

Glencree – a 46 unit subdivision directly to the north of the project site;

Dykstra Ranch/Pacific Ridge Subdivision – estimated at 216 units

Carter Hill, a 48 unit subdivision south of Terrace Ave and east of Foothill Blvd.

Coastside Community Park, a community park.

The study estimates these projects would add 4,860 additional weekday trips, 821 of which would be peak hour, and 5,541 weekend trips (705 peak hour). Again, the study concludes the project's impacts would be less than significant (significance is defined as LOS changes of <

0.02%). The study therefore recommends no additional mitigation measures (including signalization) beyond widening of Highway 1 to accommodate left and right turn lanes to and from the subdivision, which the study states were constructed in 1996.

However, the applicant's transportation consultant did not include all of the projects required to be considered in compiling a list of past, present, and probable future projects under CEQA. The CEQA Guidelines provide (14 CCR § 15130(b)):

> *"Probable future projects" may be limited to… projects included in an adopted capital improvements program, general plan, regional transportation plan, or other similar plan…* [Emphasis added.]

The list of past, present, and probable future projects used for the applicant's transportation analysis is incomplete, and underestimates future growth because not all projects identified in the City and County General Plans and the San Mateo County Countywide Transportation Plan have been included. (14 CCR § 15130(b) and 15130(b)(1)(A). The list of probable future projects does not include the future development of sites specifically identified in the land use plans, such as the subdivision and development of the Surf Beach/Dunes Beach Planned Unit Development District, which is zoned for a 150-unit subdivision. CEQA Regulation Section 15130(b)(1)(B) provides an alternative method to determine the impacts of other projects causing related impacts that relies on adopted planning documents. This method also supports the use of the Half Moon Bay and San Mateo County LCPs and the San Mateo County Countywide Transportation Plan as the relevant planning documents for the purpose of assessing the potential cumulative impacts of the proposed development. The housing supply growth projections contained in these planning documents are addressed below.

Land Use Plans

The San Mateo County and Half Moon Bay Land Use Plans specify the approximate number of households in the Mid-Coast region if maximum potential buildout occurs. Buildout refers to the point in time when all developable lots have been developed. These projections are based on current zoning and available lots. The area contains a large number of undeveloped lots in existing "paper subdivisions" dating back to the early 20th Century. The LUPs do not fully account for the development of these lots because an accurate count of the number of developable lots in these paper subdivisions does not exist. As a result, the maximum potential buildout levels may be underestimated, particularly in the County.

Half Moon Bay LUP Table 1.1 *Maximum Housing and Population, Half Moon Bay Land Use Plan* shows the City at 3,612 existing units as of 1992, growing to full buildout of 7,991-8,071 households by 2020. These projections are based on a 3-percent annual growth rate consistent with the City's certified LCP Measure A growth restriction and a ratio of 2.6 persons per household.

The San Mateo County LUP estimates the buildout population for the rural and urban Mid-Coast area north of Half Moon Bay at 17,085 persons, and for the south of the City (South Coast) at 5,000 persons (LUP Table 2.21 *Estimated Buildout Population of LCP Land Use Plan*). The LUP does not estimate the number of households that these population levels would reflect. Using the same ratio of 2.6 persons to household used for the City's LUP, the County buildout levels expressed in numbers of households is 6,571 for the Mid-Coast and 1,923 for the South

Coast. There are no annual residential growth restrictions in the County Mid-Coast and South Coast planning areas located outside the City of Half Moon Bay.

San Mateo County Countywide Transportation Plan

In June 1997, the City/County Association of Governments of San Mateo County (CCAG) published the second edition of the San Mateo County Countywide Transportation Plan Alternatives Report (CCAG 1997). The CTPAR analyzes land and transportation alternatives for cities, the County and transportation agencies to consider as the basis for the development of future land use and transportation development policy. The study consists of four major components: (1) a Travel Demand Forecasting Model which predicts how people travel and what impacts those trips have on the County's transportation system, (2) a Land Use Information System (LUIS) which provides existing and projected numbers of households and jobs for each transportation analysis zone, (3) five land use scenarios to assess how different land use densities and patterns affect travel demand and mode, and (4) eighteen transportation scenarios to test how well additive groups of projects relieve congestion.

The LUIS was developed specifically for the purpose of analyzing potential impacts of future development and job growth on the County's transportation network. The LUIS is based on information provided from each local jurisdiction, including up to date information on recently completed projects, projects under construction, proposed projects, and the supply of potential development sites (including new subdivisions) and in-fill areas.

The five land use scenarios in the CTPAR are: (1) Base Case 2010, (2) General Plan Buildout, (3) Economic Development, (4) Urban Reuse/Opportunity Areas, and (5) Reduced Growth. The sources used to develop the different scenarios include the LUIS, ABAG Projections '94, data provided by local jurisdictions, San Francisco International Airport Master Plan Final EIR, and Economic & Planning Systems, Inc.

The Base Case 2010 Scenario projects the addition of 2,555 new households will be constructed in Half Moon Bay between 1990 and 2010 for a total of 5,692 households in the City. The scenario predicts 1,798 new households for this period in the unincorporated Mid-Coast region reaching a total of 5,367 by 2010. The growth forecasts for this scenario were specifically derived from planned development and vacant land capacity information provided by local jurisdictions.

The General Plan Buildout Scenario projects the buildout for Half Moon Bay as 7,196 total households, an increase of 4,059 units from the 3,137 units existing in 1990. Buildout for the unincorporated Mid Coast is projected as 5,367 households. The growth projections for this scenario are based on local jurisdictions' future land use designations, estimates of residential development and infill capacity and projected absorption to buildout.

The Economic Development Scenario is designed to test the effects of providing increased housing in the job center areas of the County above the level projected under the base case. This scenario reflects the addition of a total of 50,000 new households in the County by 2010, which is 18,000 more than the level projected by the Base Case 2010 Scenario. Through rezoning and redevelopment, new housing above the existing General Plan buildout levels would be provided in every subregional planning area *except* Half Moon Bay and the unincorporated Mid Coast. Under the Economic Development Scenario, the change in housing supply in these two coastal planning areas for the period between 1990 and 2010 would be reduced from the Base Case

projections by 63-percent in the City and by 87-percent in the unincorporated areas. The number of households in 2010 would be reduced in this scenario to 4,087 in the City and 3,811 in the unincorporated area to reduce the traffic congestion caused by the oversupply of housing in this area.

The Urban Reuse/Opportunity Areas Scenario is designed to determine the effect of increasing land use densities in strategic areas. "Opportunity Areas" for this scenario are defined as areas that can support intensified development. This scenario assumes 8,000 more households in Opportunity Areas than in the Base Case. This scenario, like the Economic Development Scenario, provides for increased housing development above the Base Case level in all planning subregions except for Half Moon Bay and the unincorporated Mid-Coast. This scenario projects the total number of households by 2010 as 3,958 in the City and 3,811 in the unincorporated area, representing 68-percent and 87-percent reductions in growth from that projected by the Base Case.

The Reduced Growth Scenario assumes reductions in both the increases in housing supply and employment. Key to this scenario is the assumption that job growth will be limited proportional to new households. This scenario projects the total number of households by 2010 as 3,958 in the City and 3,811 in the unincorporated Mid-Coast area – the same levels as the Urban Reuse Scenario.

Discussion – Regional Growth Projections

The growth projections assumed for the applicant's cumulative impact analysis are significantly lower than those contained in both the relevant general plans/land use plans and in the regional transportation plan.

Table 1 below compares the buildout data contained in the LCPs updated with U.S. Census and California Department of Finance data to make it comparable to the information presented in the applicant's studies, the CTPAR, and the applicant's cumulative impact analysis (Sept. 25, 1998, TKJM Consultants).

TABLE 1

Additional Housing Units after 2000					
Source	**LCP 2010**	**LCP Buildout**	**CTPAR 2010**	**CTPAR Buildout**	**Applicant's study**
Half Moon Bay	2,195	4,117	1,738	3,242	310
San Mateo Co. Mid-Coast	not available	3,438	1,679	1,679	0

HOUSING UNIT GROWTH PROJECTIONS

***Estimated levels based on update of 1990 levels using U.S. Census and California Department of Finance data.**

The discrepancy between the buildout projections in the major planning documents for the region and the assumptions used in the applicant's traffic studies profoundly affect the results of the cumulative impact analysis for the project. Using either the LCP or the CTPAR evidences greater congestion and lower levels of service at buildout in all the locations addressed in the TKJM Consultants report.

3.5.5 Traffic Impacts and Volume Projections

Traffic already exceeds the capacity of area highways, and will become a greater concern in the future. The proposed development will contribute to the problem.

Assessment of the post-construction traffic impacts of the proposed development, once single family homes are developed, is based on estimated vehicle trip rates for an 83-unit development. (Note that the applicant subsequently revised their coastal development permit application to apply for a 77 unit development. Accordingly, the figures identified below would be lower.) The development will generate 794 weekday trips (84 peak hour trips) and 837 weekend day trips (78 peak hour) during the Saturday noon peak-hour (TKJM Consultants - Appendix B).

Cumulative, the study estimates these projects would add 4,860 additional weekday trips, 821 of which would be peak hour, and 5,541 weekend trips (705 peak hour). Again, the study concludes the project's impacts would be less than significant (significance is defined as LOS changes of < 0.02%). The study therefore recommends no additional mitigation measures (including signalization) beyond widening of Highway 1 to accommodate left and right turn lanes to and from the subdivision, which the study states were constructed in 1996.

Using these cumulative traffic increase forecasts, the applicant's transportation consultant reaches the following conclusions. If all of the Highway 1 and 92 improvements described above are constructed, all intersections on Highway 1 north of North Main Street and Highway 92 between Highway 1 and [proposed] Foothill Boulevard would operate at acceptable levels of service LOS A-D, and the project would not therefore result in significant cumulative traffic impacts.

The applicant's analysis shows that without the roadway improvements, all of the Highway 1 intersections would operate at LOS F. However, these impacts are dismissed as less than significant, both individually and cumulatively, defined as representing less than 0.02% of an increase in traffic congestion. This assumption ignores the concept of cumulative impact, wherein individual increases may appear small but cumulatively adverse and significant. Moreover, as discussed above, the growth projections used for the applicant's cumulative impact analysis does not comport with either of the methods to calculate cumulative impacts that are identified in CEQA. Based on the allowable buildout under the Half Moon Bay and San Mateo County LUPs, future traffic volumes are projected to be much greater than those used in the applicant's traffic analysis. Thus, the conclusions reached in the applicant's analysis regarding the cumulative impacts of the development on traffic seriously underestimate future growth because all probable future projects as defined by CEQA have not been included. The Commission finds that even with these improvements, congestion of the roads, far greater than the amount considered acceptable in the City's LCP, will continue to increase, both in Half Moon Bay and the region.

Countywide Transportation Plan Traffic Projections

The CTPAR considers eighteen transportation scenarios to test how well additive groups of projects relieve congestion. Six primary transportation scenarios were developed to test the effects to regional traffic congestion of additive groups of transportation improvement projects cumulatively. Twelve secondary transportation scenarios were developed to allow more detailed analysis of improvements to a single transportation mode. For purposes of evaluating the potential cumulative impacts of the proposed development, the Commission assumes the

maximum level of transportation improvements considered under the CTPAR as described in Transportation Scenario 6c.

CTPAR Transportation Scenario 6c assumes that all contemplated highway and transit improvements throughout the County are constructed, including the Devil's Slide bypass, Highway 92 widening and intersection improvements within Half Moon Bay, curve corrections, shoulder widening, slow vehicle passing lane for the section of Highway 92 east of Half Moon Bay to Highway 280, and public transit improvements to Caltrain, BART, and bus services. The CTPAR does not consider transportation improvement projects that are not planned or programmed such as widening and/or intersection improvements to Highway 1 within the Half Moon Bay City Limits.

The CTPAR combines the five land use and eighteen transportation scenarios to test a total of nine primary and 14 secondary alternatives to test the effects of various combinations of land use and transportation scenarios using the Travel Demand Forecasting Model. The Travel Demand Forecasting Model was developed using interactive transportation planning software to be consistent with the Metropolitan Transportation Commission's (MTC) regional travel demand forecasting model. The model consists of four main components: (1) trip generation, (2) trip distribution, (3) modal split, and (4) trip assignment. These are the typical components found in models designed to simulate travel demand based on different assumptions about land use, demographics and transportation system characteristics. The modal split component of the model was refined in 1994 and 1995 to provide a finer level of detail than the MTC model.

The nine primary alternatives analyze transportation improvements under different land use assumptions that impact all modes of transportation. The secondary alternatives assess the effects of improvements that impact only one transportation mode. Primary Alternative 6c combines Transportation Scenario 6c (maximum improvements) with the Land Use Scenario 1 (Base Case 2010). This transportation scenario is intended to show the congestion levels that will exist in 2010, even with $3.2 billion in transportation system improvements and without substantial land use and zoning changes.

Exhibit 21 shows the projected year 2010 volume to capacity (v/c) ratios during the PM peak-hour on Highways 1 and 92 under Alternative 6c. A v/c ratio of greater than 1.00 is the equivalent to LOS F. As shown in Exhibit 21, significant portions of Highway 1 north of Highway 92 will operate at v/c ratios in excess of 1.00 in both the north and southbound directions, including most of the City of Half Moon Bay. The PM peak-hour v/c ratio for westbound Highway 92 is projected under Scenario 6c to exceed 2.00 for most of the corridor east of the City to Highway 280. Thus, the CTPAR shows that even with the maximum level of transportation system investment, traffic volumes on both highways is projected to be far in excess of capacity, if residential and commercial development proceed as projected, within the limits of the City and County LCPs. It is also important to note that the Base Case 2010 land use scenario used for this alternative assumes less growth than the level allowable under the City and County LCPs and under Half Moon Bay's Measure A growth limits.

Growth Restrictions

LUP Policy 9.4, Residential Growth Limitation, limits the number of new dwelling units that the City may authorize to that necessary to allow an annual population growth of no more than 3-percent. LUP Table 9.3, *Phasing Schedule to Year 2020 Based on Maximum of 3% Annual*

Population Growth, forecasts a total of 6,149 households in the City in the year 2010. Scenario 6c is based on a forecast of 5,692 households in 2010.

City of Half Moon Bay voters passed Measure D in November 1999, imposing a 1-percent annual population growth limit within the City (with an additional 0.5-percent allowed in the downtown area). Measure D is intended to replace the existing 3-percent growth restriction under Measure A. Litigation challenging the legality of Measure D was filed shortly after its passage. The lawsuit has been stayed pending Coastal Commission approval of an LCP amendment to enact the measure. At this point, however, it would be premature to assume these annual population growth limits will be implemented. Even if Measure D does go into effect in the future, it will only serve to slow growth within the incorporated area of Half Moon Bay. Measure D will not reduce the ultimate level of growth at LCP buildout within the City and will not slow the growth in areas outside of the City Limits. Similarly, as discussed in the Commission's adopted findings on Appeal No. A-1-HMB-99-022 (Ailanto Properties/Pacific Ridge Subdivision, herein incorporated by reference into these findings), currently imposed limits on water availability cannot be relied on as a constraint to future development. The Commission found in that case: "the Commission cannot conclude that limited water supply will constrain growth in Half Moon Bay and the County below the levels projected in the CTPAR and the LUPs."

Highway 1 Improvements

The applicant proposes to mitigate the traffic impacts of the development in part by providing a new signalized access to Highway 1 at the proposed Bayview Drive to serve the proposed Beachwood Subdivision as well as existing development in the Highland Park and Grandview Terrace subdivisions, and the recently approved Pacific Ridge subdivision. The applicant proposes to installation of a traffic signal at the Bayview/Highway 1 intersection with new ingress and egress and turning lanes on Highway 1. However, as conditioned to conform to the LCP wetland protection policies, Bayview Drive will serve only the residential lots approved within the Beachwood project site, and will not connect to any of these other developments. Consequently, the new intersection on Highway 1 at Bayview Drive necessary to serve the development will only further interrupt traffic flow on Highway 1. Furthermore, it is unlikely that Caltrans will approve the installation of a traffic signal on Highway 1 to serve the limited number of residences that may be constructed on the lots approved under this permit. The applicant contends that without the traffic mitigation fees provided by the proposed development, needed improvements to Highway 1 within the city will not be made. However, it is reasonable to expect that the ever-worsening traffic congestion will spur local governments to carry out all feasible improvements whether or not this project goes ahead, although if the applicant provides funding, it may expedite certain improvements. Over the long-term, however, the Commission finds that the applicant's proposed improvements may well be implemented even in the absence of funding from this project.

Thus, the Commission cannot rely on these potential Highway 1 improvements to mitigate the impacts to regional traffic congestion caused by the proposed development. Even if the section of Highway 1 along the western project site boundary is improved and a traffic signal is installed at Bayview and Highway 1, significant sections of both Highway 1 north of the City and Highway 92 east of the City will continue to operate at LOS F or worse. Highway improvements to this small section of roadway within the City will do little to mitigate the impacts of traffic

congestion caused by new development to coastal visitors, including the proposed project's significant adverse cumulative impacts to traffic congestion and the public's ability to access the coast.

Consideration of project impacts at a regional level is expressly required under the CEQA Regulations concerning cumulative impact analysis. In addition to underestimating growth, the applicant's cumulative impact analysis has not adequately considered the impacts of the development to traffic congestion at a regional level; rather it relies on the assumption that small levels of increase are not deemed "significant" and it assumes traffic improvements that may or may not be implemented. The analysis also does not analyze the impact where Highway 1 will remain two lanes within the urban area, even after the assumed widening in the vicinity of the project, nor Highway 1 in the rural area north and south of the City where Coastal Act Section 30254 requires that it remain two lanes. Highways 1 and 92 are the only roads available to reach this part of the coast. An analysis of the contribution of the project to potential bottlenecks on these coastal arteries is essential in evaluating the significant cumulative adverse impacts of the proposed development. Furthermore, as noted in ABAG 1999, Coastside Subregional Planning Project:

> *CONGESTION LEVELS*
>
> *Between 1995 and 1996 San Mateo County experienced a 125% increase in congestion, a rate more than double any other county in the Bay Area. According to the 1995 San Mateo County Congestion Management Plan, the subregion currently suffers from some of the worst peak-hour congestion in the County. More recent data in the June 1997 San Mateo County Transportation Plan (CTP): Alternatives Report indicates that by 2010 key segments of Highways 1 and 92 will operate at the lowest level of service (LOS F) during peak commute times and that the maximum foreseeable public investments in highway and transit improvements will not be able to prevent congestion in the subregion from getting even worse. In addition, planned improvements in mass transit systems including Caltrain and BART do not by themselves offer significant reductions in peak hour congestion Countywide and are even less effective within the subregion given the area's geography and remote location, particularly in Half Moon Bay and the Midcoast.*
>
> *In addition to limited road capacity, other factors contributing to current and projected increases in congestion include a jobs-housing imbalance, limited access to transit, and a strong preference for driving alone to work.*

Thus, as the Commission noted in Appeal No. A-1-HMB-99-022 (Ailanto Properties/Pacific Ridge Subdivision) "the CTPAR shows that even with the maximum investment of $3.2 billion in highway and transit improvements, the regional level of service on Highways 1 and 92 will be significantly worse than the current unacceptable levels, *even with growth control measures in place*."

3.5.6 Traffic Impacts to Public Access and Visitor Serving Uses

Traffic congestion resulting from the proposed subdivision will interfere with the public's ability to access the coast.

The Half Moon Bay shoreline includes approximately 4.5 miles of heavily used publicly owned beach. As the population of the greater San Francisco Bay area continues to grow, use of the Half Moon Bay beaches is expected to increase. The congestion on Highways 1 and 92 is currently at a level that significantly interferes with the public's ability to access the Half Moon Bay shoreline. Approval of new subdivisions in the area would increase the level of development beyond that required to be allowed under the current parcelization. Such action would further interfere with the public's ability to access the San Mateo coast, would consume road capacity for a non-priority use, and would locate development in areas with inadequate services creating a significant adverse impact on coastal resources in conflict with certified LCP policies.

LUP Policy 9-4 requires that development shall be served with adequate services and that lack of adequate services shall be grounds for denial of a development permit or reduction in the density otherwise allowed under the LUP.

Section 10.4.4 of the City's LCP states that:

- The Coastal Act requires that road capacity not be consumed by new, non-priority developments, at the expense of adequate service for priority uses, such as public recreation and visitor-serving commercial uses.
- The major issue involves potential conflict for transportation capacity between new residential development and reservation of adequate capacity for visitor travel to Coastside beaches.

LCP Policy 10-4 reserves public works capacity (including highway capacity) for priority uses to ensure that this capacity is not consumed by other development, and controls the rate of permitted new development to avoid overloading public works and services. In addition, the City adopted Coastal Act Sections 30210 and 30252 as guiding policies to the LCP. These policies require that development shall not interfere with the public's ability to access the sea, the location and amount of new development should maintain and enhance public access to the coast, and that new development be located in areas with adequate public services where it will not have a significant adverse effect, either individually or cumulatively, on coastal resources. Moreover, pursuant to LUP Policy 9-4, lack of adequate services shall be grounds for denial of a development permit or reduction in the density otherwise allowed under the certified LCP.

3.5.7 Mitigation Proposed by Applicant

As discussed above, the applicant proposes improvements at the intersection of Bayview Drive and Highway 1 including lane widening and a traffic signal to serve the proposed Beachwood Subdivision as well as existing development in the Highland Park and Grandview Terrace subdivisions, and the recently approved Pacific Ridge subdivision.. The infrastructure improvements proposed by the applicant are all in Half Moon Bay and would not mitigate the project's impacts on traffic congestion outside the city limits at all. These improvements have not been approved by either Caltrans or the City. Moreover, as conditioned to conform to the LCP wetland protection policies, Bayview Drive will serve only the limited number of residential lots approved within the Beachwood project site, and will not connect to any of these other developments. Consequently, the new intersection on Highway 1 at Bayview Drive necessary to serve the development will only further interrupt traffic flow on Highway 1. It is unlikely that Caltrans will approve the installation of a traffic signal on Highway 1 to serve the

limited number of residences that may be construct on the lots approved under this permit. The applicant contends that without the traffic mitigation fees provided by the proposed development, needed improvements to Highway 1 within the city will not be made. However, it is reasonable to expect that the ever-worsening traffic congestion will spur local governments to carry out all feasible improvements whether or not this project goes ahead, although if the applicant provides funding, it may expedite certain improvements. Over the long-term, however, the Commission finds that the applicant's proposed improvements may well be implemented even in the absence of funding from this project.

Thus, the Commission cannot rely on these potential Highway 1 improvements to mitigate the impacts to regional traffic congestion caused by the proposed development. Even if the section of Highway 1 along the western project site boundary are improved and a traffic signal is installed at Bayview and Highway 1, significant sections of both Highway 1 north of the City and Highway 92 east of the City will continue to operate at LOS F or worse. Highway improvements to this small section of roadway within the City will do little to mitigate the impacts of traffic congestion caused by new development to coastal visitors, including the proposed project's significant adverse cumulative impacts to traffic congestion and the public's ability to access the coast. As discussed above, infrastructure improvements alone are inadequate to mitigate the significant adverse regional cumulative traffic impacts of the proposed development.

In addition, the applicant proposes to mitigate the regional cumulative traffic impacts of the proposed development though payment to the city of the traffic mitigation fee required by the city's zoning code. The applicant has not, however, demonstrated how these funds would significantly decrease the use of private cars in Half Moon Bay or in the region. Accordingly, there is no indication that this proposal would mitigate the project-specific or cumulative impacts that conflict with the LCP traffic and public access policies.

As discussed above, the CTPAR shows that even with the maximum investment of $3.2 billion in highway and transit improvements, the regional level of service on Highways 1 and 92 in 2010 will be significantly worse than the current levels. CTPAR Transportation Scenario 6c assumes that all contemplated highway and transit improvements throughout the County are constructed, including the Devil's Slide bypass, Highway 92 widening and intersection improvements within Half Moon Bay, curve corrections, shoulder widening, slow vehicle passing lane for the section of Highway 92 east of Half Moon Bay to Highway 280, and public transit improvements to Caltrain, BART, and bus services. This transportation scenario is intended to show the congestion levels that will exist in 2010, even with $3.2 billion in transportation system improvements, without substantial land use and zoning changes. The results demonstrate that even with these transportation system improvements, the 2010 traffic volume will more than double the capacity of Highways 1 and 92 at numerous sections within the Mid-Coast during peak periods. Thus, the Commission finds that the mitigation measures proposed by the applicant are insufficient to offset the significant adverse cumulative traffic impacts of the proposed development on regional traffic congestion or the consequent significant adverse cumulative impacts to the public's ability to access the coast.

3.5.8 Land Use Controls

The San Mateo County Congestion Management Plan (CCAG 1998) states that one of the key contributors to traffic congestion in the County is the imbalance between the number of people

who work in the County and the County's housing supply. For most communities in the County, the problem is a shortage of housing near job centers. However, in the County mid-coast region including Half Moon Bay, the problem is reversed. It is primarily because the Mid-Coast housing supply far exceeds the local job supply that commuter traffic congestion on Highways 1 and 92 is at its current state. The CMP finds that based on projected job growth the 2010 housing supply in the City will exceed local housing needs by 3,235 units. The CMP shows that given expected job growth rates, only 315 additional housing units above the 1990 level will be needed in the City by 2010. Additional job growth above that projected in the City could help to alleviate this imbalance. Congestion management dictates that the County's housing supply needs should be addressed by providing additional housing in the job centers of the County and not in the Mid-Coast area.

According to the data contained in Table 9.1 of the Half Moon Bay LUP, there are currently approximately 2,500 existing subdivided small lots that could potentially be developed under the LUP. These include 2,124 to 2,189 in-fill lots in existing residential neighborhoods and 325 to 340 lots in undeveloped "paper subdivisions." Many of these existing lots, particularly those in "antiquated subdivisions" do not conform with current zoning standards, and their development potential is unclear. Assuming arguendo that some of these lots are legal lots, the Fifth Amendment to the United States Constitution provides that the government shall not take land without just compensation. In accordance with this principle, Coastal Act Section 30010 provides:

> *The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.*

However, while the owners of legally subdivided lots are entitled to a reasonable economic use of their existing legally subdivided lots, the Commission is not obligated to create additional lots.

Buildout of the existing already subdivided small lots within the City could provide for as many as 2,529 new housing units, exceeding the City's 2010 housing supply need by 2,214 units (based on expected job growth) according to the County CMP. The Beachwood site is made up of one existing lot, which could be developed even without a subdivision. Given the inability of the area's highways to serve the potential development of the existing subdivided lots within the City, the Commission could, consistent with the policies of the LCP, deny the proposed subdivision because it would serve to further increase the potential buildout of the area.

3.5.9 Lot Retirement

One way in which the impacts of new subdivisions within the City to the highway congestion could be avoided is through a transfer of development rights (TDR) program. A TDR (also known as transfer of development credit) program could allow the overall buildout level within the City to be reduced by transferring the development rights of existing undeveloped small lots to unsubdivided areas. Such a program in the City could be used to retire the development potential of the many non-conforming lots in "antiquated subdivisions" and in existing

neighborhoods. Such a program could facilitate more appropriate planning to allow development in areas more suitable for residential uses while preserving open space for public access, viewshed, and habitat protection.

Lot retirement, however, is not dependent on the existence of an established TDR program, but can feasibly be undertaken by an individual developer in the absence of any such program. In fact, the Wavecrest Village Development considered by the Commission in October 2000 proposed a net decrease in developable lots in Half Moon Bay. Even so, the City has included the development of a TDR program in its work program for the LCP update, and the Commission awarded assistance grant funding for this work program in December 2000.

In the December 15, 1999 preliminary assessment of the feasibility of establishing a TDR program, the City's consultant identified 663 parcels and 1,453 potential transfer or donor sites in four PUD districts in the City. These sites were identified as particularly desirable donor sites for a TDR program to achieve a number of planning goals. However, since any existing legal lot is potentially developable, the retirement of existing legal lots at any location within the Mid-Coast region, including both infill lots and antiquated subdivisions, would be sufficient to mitigate the significant adverse cumulative impacts of the proposed subdivision. In addition, since development anywhere within the San Mateo County Mid-Coast contributes to traffic congestion on Highways 1 and 92, retirement of development rights anywhere in this region would offset the significant adverse cumulative impacts of the Beachwood development. Thus, in addition to the donor sites identified in the City's preliminary assessment, the proportional retirement of development rights on any of the several thousand existing undeveloped legal lots within the Mid-Coast region would serve to offset the significant adverse cumulative impacts of the proposed project.

The Commission has previously imposed a lot retirement requirement as a condition of approval for proposed subdivisions in an area without a transfer of development rights program. The Commission first imposed such a requirement in 1979 as a condition of a coastal development permit for a small lot subdivision in the Santa Monica Mountains to mitigate for significant adverse cumulative impacts on public access to and along the coast due to severe traffic congestion on Highway 1. The Commission took this action prior to the creation of the Malibu/Santa Monica Mountains TDC program in Los Angeles County. In fact, the Commission's action in 1979 provided a major impetus for the formation of the Malibu/Santa Monica Mountains TDC program. To this day, the Commission continues to implement the Malibu/Santa Monica Mountains TDC program by conditioning the approval of coastal development permits for new subdivisions in the affected area. Thus, the imposition of Special Condition 3 is consistent with the Commission's action on Appeal No. A-1-HMB-99-022 (Ailanto Properties/Pacific Ridge Subdivision), as well as with actions on numerous subdivisions proposed in the Santa Monica Mountains for over 20 years. The Commission also finds that Special Condition 3 is consistent with TDC programs in San Luis Obispo County and Big Sur. Thus, the Commission finds that this requirement is consistent with over 20 years of both Commission and local government regulation of coastal development under the Coastal Act and certified local coastal programs in other areas of the state.

The Commission also finds that the cost of implementing Special Condition 3 would be a small fraction of the anticipated market value of the development. The city's 1999 TDR feasibility study identified 1,453 potential donor lots in four PUD-zoned districts within the city limits. Most of these donor lots do not meet the 5,000-square-foot minimum parcel size required under

the city's zoning code and are contained in paper subdivisions that are not served by roads or other infrastructure. This represents only a small fraction of the tens of thousands of existing substandard lots in paper subdivisions throughout the San Mateo County Mid-Coast. Though the development potential of these substandard lots is limited, in accordance with Coastal Act Section 30010, any privately owned legal lot, substandard or not, is potentially developable. Given the substantial economic value of coastal development and the proximity of the Mid-Coast to San Francisco and Silicon Valley, the Commission must assume that, unless acquired for open space or conservation purposes, any existing legal lot in private ownership will eventually be developed.

The city's TDR feasibility study considered a number of factors to set a value for the transfer of development credits available in the donor sites considered. The study recommends combining the 1,453 substandard lots in accordance with the zoning code minimum parcel size to provide a total of 432 development credits at a value of $32,500 per credit. At this price, one development credit would cost the applicant a $32,500. However, under Special Condition 3, a full transfer of development credit is granted to any existing legal lot without consideration of the lot's development potential or zoning conformity. Thus, each of the 1,453 lots considered in the city's study is a potential donor lot under the condition. On average, the value of these substandard paper lots is considerably lower than $32,500. Based on recent sales of substandard lots as well as information provided by the Half Moon Bay Planning Department, the Commission finds that such lots are valued at between $3,000 to $50,000 with the majority at the lower end of the range. Thus, the Commission estimates the cost of implementing Special Condition 3 at between approximately $3,000 and $50,000 per lot.

In the immediately adjacent Terrace Avenue area, recent sales (August 1999 to September 2001) show a median sales price for undeveloped parcels of $27.17 per square foot and an average per square foot price of $27.63. Prices in this area ranged over this period from $23.54 to $33.20 per square foot. In the 94019 Zip Code area (El Granada, Miramar, and Half Moon Bay) as a whole, prices for undeveloped parcels varied considerably more widely, with prices as high as $383 per square foot in Miramar, and as low as $8 per square foot in El Granada. Average per square foot price of undeveloped parcels for the 94019 Zip Code was $249.43, median per square foot price was $56.21. As proposed, the subdivision would include lots that range in size from approximately 7,500 to 16,000 square feet. Based on the average price per square foot of lots recently sold in the Terrace Avenue area, the value of the proposed lots is currently approximately $207,225 to $442,080. The Commission therefore finds that the $3,000 to $50,000 cost per lot of implementing Special Condition 3 would not render the proposed development economically infeasible.

3.5.10 Constitutionality of Lot Retirement Condition

Pursuant to Coastal Act Section 30010, the Commission is restricted from acting in a manner that would take or damage private property for public use without the payment of just compensation. In applying this policy in its consideration of the proposed development, the Commission is guided by the U.S. Supreme Court decisions in Lucas, Nollan and Dolan.[23]

[23] Lucas v. South Carolina Coastal Council (1992) 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798. Nollan v. California Coastal Commission (1987) 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677. Dolan v. City of Tigard, (1994) 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304.

Under the Nollan decision, the Commission must find that the mitigation required by the conditions it imposes is reasonably related to the impact it is intended to offset. In other words, there must be a relationship or "nexus" between the nature of the mitigation requirement and the nature of the impact caused by the development. As discussed herein, residential development in the Mid-Coast region is the primary cause of the severe traffic congestion on Mid-Coast Highways 1 and 92. Any increase in the potential level of buildout in the region will lead to even greater demands on infrastructure that cannot support existing buildout or buildout of the existing supply of legal lots in the region. Because there are no alternative access routes to and along the coastline in this area of the coast, the extreme traffic congestion on Highways 1 and 92 significantly interferes with the public's ability to access the area's substantial public beaches and other visitor serving coastal resources in conflict with these policies. Consequently, the applicant's proposal to create new lots for residential development, adding to this supply of existing legal lots in Half Moon Bay, will result in significant adverse cumulative impacts to regional traffic congestion and the public's ability to access the coast in conflict with the Half Moon Bay LCP. Special Condition 3 specifically addresses these impacts by preventing any increase in the development potential of legal lots for residential development. Therefore, the Commission finds that a clear nexus exists between the nature of the requirements of Special Condition 3 and the nature of the significant adverse cumulative impacts to regional traffic and coastal access caused by the proposed residential development.

The Commission further finds that the mitigation requirements of Special Condition 3 is also roughly proportional to the significant adverse cumulative traffic and coastal access impacts attributable to the proposed residential development. The applicant proposes to subdivide one existing legal lot into 77 lots for residential development and one open space parcel. In accordance with Special Conditions 1 and 2 concerning protection of wetlands, the Commission has reduced the number of new lots for residential development. Prior to the proposed subdivision, the project site consists of one legal lot. Special Condition 3 requires the retirement of the development rights of the number of existing legal lots equal to the number of new lots to be created consistent with the wetland protections of Special Condition 1. The Commission finds that the 1:1 ratio of lots created to lots in which development rights are retired clearly establishes that the degree of the mitigation is roughly proportional to the degree of the impact.

3.5.11 Conclusion

Current traffic volumes in numerous bottleneck sections of both highways within the City and in the broader county region exceed maximum capacity with a v/c ratio worse than LOS F. The CTPAR, which represents the most comprehensive regional transportation study undertaken for the area, finds that even with the maximum level of investment in transit and highway improvements, congestion in the Mid-Coast region of the County will continue to increase over the next decade. The resulting traffic volumes on both Highways 1 and 92 will greatly exceed the capacity of these roadways. The proposed development will significantly contribute to the existing traffic congestion, adversely impacting the public's ability to access the coast for priority uses such as public access and recreation.

The LUP contains several policies that require new development to be served by adequate road facilities to serve priority uses such as public access and recreation, including Policies 9-2, 9-4, 10-4, and 10-25. These LCP policies carry out the requirements of Coastal Act Sections

30250(a) and 30252, which the City has adopted as guiding policies to the LCP. Section 30250(a) requires that new development be located in areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. Section 30252 states that the amount and location of new development should maintain and enhance public access to the coast. LUP Policy 9-4 requires that development shall be served with adequate services and that lack of adequate services shall be grounds for denial of a development permit or reduction in the density otherwise allowed under the LUP. Policy 10-4 states that the City shall reserve public works capacity for priority land uses including public access and recreation from consumption by other non-priority uses such as residential development. LUP Policy 10-25 designates LOS C as the desired level of service on Highways 1 and 92 except during the weekday and weekend peak-hours when LOS E may be accepted. The proposed subdivision would create additional demand on area highways for a non-priority use far in excess of their current and future capacity.

To offset the impacts of the proposed development to regional cumulative traffic congestion on the area's two major coastal access routes, the Commission imposes Special Condition 3. Special Condition 3 will offset the impacts of the regional traffic impacts of the proposed development by preventing a net increase in the potential level of buildout of residential development in the region because buildout potential must be retired on the same number of lots proposed to be created, thereby eliminating the number of vehicular trips associated with the buildout potential eliminated. Therefore, the Commission finds that, as conditioned, the proposed development is consistent with LUP Policies 9-2, 9-4, 10-4, and 10-25 and with Coastal Act Sections 30210, 30250(a), and 30252.

3.6 Water Quality/Polluted Runoff

The Commission finds that, as conditioned, the proposed development includes adequate measures to prevent significant adverse impacts to coastal water quality consistent with the water quality protection policies of the LCP.

3.6.1 LCP Policies

LUP Policy 4-8 states that no new development shall cause or contribute to flood hazards. Policy 4-9 requires new development to be designed and constructed to (1) prevent increases in runoff, erosion, and flooding, (2) minimize runoff from graded areas, and (3) dissipate the energy of storm water discharges from outfalls, gutters, and other conduits. The policy provides:

> *All development shall be designed and constructed to prevent increases in runoff that would erode natural drainage courses. Flows from graded areas shall be kept to an absolute minimum, not exceeding the normal rate of erosion and runoff from that to the undeveloped land. …*

The LCP also adopts Coastal Act Policy 30253, which requires new development to neither create nor contribute significantly to erosion or destruction of the site or surrounding area, and Coastal Act Section 30231 which provides:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where*

feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

3.6.2 Discussion

The proposed subdivision would increase the amount of impervious surfaces in the area by adding new roads, driveways, and patios and facilitating use of the undeveloped site for structures, roofs, and other hard-surfaced features. Such increases in the amount of impervious surfaces will result in a corresponding increase in the rate and volume of storm water run-off from the site. This increase in rate and volume of storm water has the potential to result in flooding and erosion. The project would also significantly increase non-point source pollution, both during construction and after completion of the project. The increase in non-point source pollution has the potential to adversely impact water quality in the ocean and Pilarcitos Creek, which flows near this project (approximately ¼ mile). Further, the increases in runoff and non-point source pollution could adversely affect wetlands located on the project site. The stormwater and non-point source pollution impacts could potentially modify the hydrology of the wetlands, degrade water and sediment quality within the wetlands, and degrade the habitat value of the wetlands.

The project includes substantial grading, road construction, vegetation removal, and other construction related site disturbance that could result in significant impacts to the wetlands on the site as well as to off-site coastal waters due to erosion and sedimentation. The project plans show that a substantial volume of the runoff from the site will be directed into a storm drain system that discharges into Pilarcitos Creek. Pilarcitos Creek is identified in the LCP as an important riparian habitat area and is known to provide habitat for the California red-legged frog.

3.6.3 Mitigation Measures

To ensure the protection of coastal water quality and biological productivity from impacts associated with grading, vegetation removal and other construction-related activities, the Commission imposes Special Condition __ requiring the applicant to implement specific erosion and polluted runoff control measures in accordance with an approved erosion control plan. The erosion control plan is required to include specific BMPs to address: (1) erosion and sediment source control, (2) runoff control and conveyance, (3) sediment capturing devices, and (4) chemical control. The condition requires monitoring and maintenance of all erosion control BMP devices.

In addition to the measures required under Special Condition __, Special Condition __ requires the applicant to prepare and implement a storm water pollution prevention plan (SWPPP) to provide for long-term polluted runoff control. Special Condition __ requires the SWPPP to include specific BMPs to: (1) minimize the creation of impervious surfaces, (2) reduce polluted runoff from roads and other paved areas, and (3) control polluted runoff related to irrigation and use of chemicals associated with landscaping, and requires long-term maintenance of these BMP devices. Special Condition __ also requires the applicant to implement an approved water quality monitoring plan that includes specific quality standards to evaluate the effectiveness of the SWPPP in protecting the quality of both surface and groundwater. Finally, Special Condition

__ requires the applicant to take corrective actions as needed to remedy any failure to obtain the water quality standards specified in the approved water quality monitoring plan.

3.6.4 Conclusion

The Commission finds that as conditioned to control both construction and post-construction related polluted runoff and to require long-term water quality monitoring and protection, the proposed development is consistent with the erosion control and water quality protection policies of the Half Moon Bay LCP.

3.7 Public Views

The proposed project, which does not include the construction of residential homes is consistent with the visual resource requirements of the certified LCP.

3.7.1 LCP Policies

The applicable sections of the LCP include the following, which are reproduced in their entirety in Appendix A at the end of this report:

Policy 7-5

All new development, including additions and remodeling, shall be subject to design review and approval by the City Architectural Review Committee.

Coastal Act Section 30251

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas**…***

Zoning Code Section 18.37.020(B) (1)

Visual Resource Areas within the City are defined as follows:

…

Scenic Hillsides which are visible from Highway One and Highway 92…. These areas occur include (sic) *hillside areas above the 160 foot elevation contour line which are located:*

1. East of the proposed Foothill Boulevard, comprising portions of Carter Hill and Dykstra Ranch properties.

Zoning Code Section 18.37.030 (B):

Development within the Highway One Corridor … where existing permits or development does not exits. In general, structures shall be:

1. Situated and designed to protect any views of … scenic coastal areas. …

4. Set back an appropriate distance from the Highway One Right-of-Way….

5. Designed to maintain a low height above natural grade, unless a greater

height would not obstruct public views.

3.7.2 Discussion

The Dykstra Ranch area (the site of the Ailanto subdivision, located uphill and east of the project site) is identified in the Half Moon Bay LCP as a scenic area (above the 160-foot contour line). This scenic area is visible from Highway 1 as it rises above the more level Beachwood subdivision site. The City's conditions of approval for the development required the construction of an approximately 525 feet long, six feet high, sound wall along the project site's Highway 1 frontage. The Commission is concerned with the visual impact and cumulative impacts on community character from use of this type of device to minimize the impacts of traffic noise on residential development. These features may block views of the scenic coastal area identified in the Zoning Code, inconsistent with the zoning policy that protects those views. In addition, the approved sound wall would be the first structure of this type in this portion of the City. Although there is a sound wall in the southern part of the City (approximately 2.5 miles south of the Beachwood site), there are no sound walls on Highway One in the area of the Beachwood subdivision. Thus, the character of the area around the Beachwood site, as viewed from Highway One, is not affected by existing sound walls. The construction of the new sound wall at the Beachwood site would change the character of that area as viewed from Highway One. Section 30251 of the Coastal Act (which is incorporated into the LCP by LUP policy 1-1) requires new development to be consistent with the character of the surrounding area. The applicant has provided line-of-sight drawings showing that at least some portions of the Dykstra Ranch hills would be visible above the sound wall; nevertheless the applicant has indicated its acceptance of eliminating the sound wall from the project. Condition 1 is further imposed to assure the project will be revised to eliminate this feature. As conditioned, therefore, the project is consistent with the visual policies of the LCP.

Additionally, the Commission was initially concerned over City's resolution for approval of this subdivision, which was written in a manner appearing to authorize the construction of up to 83 houses on the to-be-created lots. However the file contained no plans for any such homes, and the applicant's coastal development permit application did not include a request for authorization of structures. In fact, both the City and the applicant have clarified that the coastal development permit application does not seek authorization for construction of homes. (Exhibit 8). Condition 8 is imposed to further clarify this understanding. Thus, any visual issues raised in connection with future homes proposed on the site can be addressed at such time that coastal development permit applications are made for these homes.

3.7.3 Conclusion

The Commission finds that, as conditioned to clarify that no structures other than roads and underground infrastructure are authorized under this permit, the proposed development will not affect public views protected under the Half Moon Bay LCP.

4.0 California Environmental Quality Act

Section 13096 of the Commission's administrative regulations requires Commission approval of CDP applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a

proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. This staff report addresses and responds to all public comments regarding significant adverse environmental effects of the project that were received as of the writing of the staff report. The proposed development has been conditioned in order to enable it to be found consistent with the traffic, public access and recreation, environmentally sensitive habitat, wetland, riparian corridor, visual resource, erosion control and water quality policies of the certified LCP, and the public access and recreation policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, that would substantially lessen any significant adverse impact that the development may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the certified LCP and Coastal Act and to conform to CEQA.

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3. George Carman, March 5, 1999.
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8. Huffman and Associates, Beachwood Subdivision, Half Moon Bay, California, LCP Wetland Delineation, January 29, 2001.
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APPENDIX B

Referenced Policies

California Coastal Act

Section 30010

The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30241

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.

(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Section 30242

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (l) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

Section 30250

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

(b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.

(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

Section 30252

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30254

New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route l in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

Section 30603

(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.

(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.

(3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.

(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).

(5) Any development which constitutes a major public works project or a major energy facility.

(b) (1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

(2) The grounds for an appeal of a denial of a permit pursuant to paragraph (5) of subdivision (a) shall be limited to an allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies set forth in this division.

(c) Any action described in subdivision (a) shall become final at the close of business on the 10th working day from the date of receipt by the commission of the notice of the local government's final action, unless an appeal is submitted within that time. Regardless of whether an appeal is submitted, the local government's action shall become final if an appeal fee is imposed pursuant to subdivision (d) of Section 30620 and is not deposited with the commission within the time prescribed.

(d) A local government taking an action on a coastal development permit shall send notification of its final action to the commission by certified mail within seven calendar days from the date of taking the action.

Section 30604

(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200). A denial of a coastal development permit on grounds it would prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for that conclusion.

(b) After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program.

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

(d) No development or any portion thereof which is outside the coastal zone shall be subject to the coastal development permit requirements of this division, nor shall anything in this division authorize the denial of a coastal development permit by the commission on the grounds the proposed development within the coastal zone will have an adverse environmental effect outside the coastal zone.

(e) No coastal development permit may be denied under this division on the grounds that a public agency is planning or contemplating to acquire the property on, or property adjacent to the property on, which the proposed development is to be located, unless the public agency has been specifically authorized to acquire the property and there are funds available, or funds which could reasonably be expected to be made available within one year, for the acquisition. If a permit has been denied for that reason and the property has not been acquired by a public agency within a reasonable period of time, a permit may not be denied for the development on grounds that the property, or adjacent property, is to be acquired by a public agency when the application for such a development is resubmitted.

Section 30621

(a) The commission shall provide for a de novo public hearing on applications for coastal development permits and any appeals brought pursuant to this division and shall give to any affected person a written public notice of the nature of the proceeding and of the time and place of the public hearing. Notice shall also be given to any person who requests, in writing, such notification. A hearing on any coastal development permit application or an appeal shall be set no later than 49 days after the date on which the application or appeal is filed with the commission.

(b) An appeal that is properly submitted shall be considered to be filed when any of the following occurs

(1) The executive director determines that the appeal is not patently frivolous pursuant to subdivision (d) of Section 30620.

(2) The five-day period for the executive director to determine whether an appeal is patently frivolous pursuant to subdivision (d) of Section 30620 expires without that determination.

(3) The appellant pays the filing fee within the five-day period set forth in subdivision (d) of Section 30620.

Section 30625

(a) Except as otherwise specifically provided in subdivision (a) of Section 30602, any appealable action on a coastal development permit or claim of exemption for any development by a local government or port governing body may be appealed to the commission by an applicant, any aggrieved person, or any two members of the commission. The commission may approve, modify, or deny such proposed development, and if no action is taken within the time limit specified in Sections 30621 and 30622, the decision of the local government or port governing body, as the case may be, shall become final, unless the time limit in Section 30621 or 30622 is waived by the applicant.

(b) The commission shall hear an appeal unless it determines the following:

(1) With respect to appeals pursuant to subdivision (a) of Section 30602, that no substantial issue exists as to conformity with Chapter 3 (commencing with Section 30200).

(2) With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

(3) With respect to appeals to the commission after certification of a port master plan, that no substantial issue exists as to conformity with the certified port master plan.

(c) Decisions of the commission, where applicable, shall guide local governments or port governing bodies in their future actions under this division.

California Coastal Commission Regulations

§ 13096. Commission Findings.

(a) All decisions of the commission relating to permit applications shall be accompanied by written conclusions about the consistency of the application with Public Resources Code section 30604 and Public Resources Code section 21000 and following, and findings of fact and reasoning supporting the decision. The findings shall include all elements identified in section 13057(c).

(b) Unless otherwise specified at the time of the vote, an action taken consistent with the staff recommendation shall be deemed to have been taken on the basis of, and to have adopted, the reasons, findings and conclusions set forth in the staff report as modified by staff at the hearing. If the commission action is substantially different than that recommended in the staff report, the prevailing commissioners shall state the basis for their action in sufficient detail to allow staff to prepare a revised staff report with proposed revised findings that reflect the action of the commission. Such report shall contain the names of commissioners entitled to vote pursuant to Public Resources Code section 30315. 1.

(c) The commission vote taken on proposed revised findings pursuant to Public Resources Code section 30315.1 shall occur after a public hearing. Notice of such hearing shall be distributed to the persons and in the manner provided for in section 13063. The public hearing shall solely address whether the proposed revised findings reflect the action of the commission.

§ 13115. Substantial Issue Determination.

(a) At the meeting next following the filing of an appeal with the Commission or as soon thereafter as practical, the executive director shall make a recommendation to the commission as to whether the appeal raises a significant question within the meaning of Section 30625(b).

(b) Unless the Commission finds that the appeal raises no significant question as to conformity with the certified local coastal program or, in the case of a permit application for a development between the sea and the first public road paralleling the sea (or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach) that there is no significant question with regard to the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976, the Commission shall consider the application de novo in accordance with the procedures set forth in Sections 13057-13096.

(c) The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to hear an appeal. A majority vote of the members of the Commission present shall be required to determine that the Commission will not hear an appeal.

§ 13577. Criteria for Permit and Appeal Jurisdiction Boundary Determinations.

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

(a) Streams. Measure 100 feet landward from the top of the bank of any stream mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program. The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the water within the bed and to preserve the course of the stream. In areas where a stream has no discernable bank, the boundary shall be measured from the line closest to the stream where riparian vegetation is permanently established. For purposes of this section, channelized streams not having significant habitat value should not be considered.

(b) Wetlands.

(1) Measure 100 feet landward from the upland limit of the wetland. Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:

(A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;

(B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or

(C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

(2) For the purposes of this section, the term "wetland" shall not include wetland habitat created by the presence of and associated with agricultural ponds and reservoirs where:

(A) the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; and

(B) there is no evidence (e.g., aerial photographs, historical survey, etc.) showing that wetland habitat pre-dated the existence of the pond or reservoir. Areas with drained hydric soils that are no longer capable of supporting hydrophytes shall not be considered wetlands.

Half Moon Bay Land Use Policies

Policy 1-1

The City shall adopt those policies of the Coastal Act (Coastal Act Sections 30210 through 30264) cited herein, as the guiding policies of the Land Use Plan.

Policy 1-4

Prior to the issuance of any development permit required by this Plan, the City shall make the finding that the development meets the standards set forth in all applicable Land Use Plan policies.

Policy 3-1 Definition of Sensitive Habitats

(a) Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and as those areas which meet one of the following criteria: (1) habitats containing or supporting "rare and endangered" species as defined by the State Fish and Game Commission, (2) all perennial and intermittent streams and their tributaries, (3) coastal tidelands and marshes, (4) coastal and offshore areas containing breeding and/or nesting sites and coastal areas used by migratory and resident water-associated birds for resting and feeding, (5) areas used for scientific study and research concerning fish and wildlife, (6) lakes and ponds and adjacent shore habitat, (7) existing game and wildlife refuges and reserves, and (8) sand dunes.

Such areas include riparian areas, wetlands, sand dunes, marine habitats, sea cliffs, and habitats supporting rare, endangered, and unique species.

APPENDIX A: Special Definitions…

WETLAND

Wetland is an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mudflats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along

streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and man-made impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernally wet areas where the soils are not hydric.

3-3 Protection of Sensitive Habitats

(a) Prohibit any land use and/or development which would have significant adverse impacts on Sensitive Habitat areas.

(b) Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the Sensitive Habitats. All uses shall be compatible with the maintenance of biologic productivity of such areas.

3-4 Permitted Uses

(a) Permit only resource-dependent or other uses which will not have a significant adverse impact in sensitive habitats.

(b) In all sensitive habitats, require that all permitted uses comply with U.S. Fish and Wildlife Service and State Department of Fish and Game regulations.

3-5 Permit Conditions [Biologic Report]

(a) Require all applicants to prepare a **biologic report** by a qualified professional selected jointly by the applicant and the City to be submitted prior to development review. The report will determine if significant impacts on the sensitive habitats may occur, and recommend the most feasible mitigation measures if impacts may occur.

The report shall consider both any identified sensitive habitats and areas adjacent. Recommended uses and intensities within the sensitive habitat area shall be dependent on such resources, and shall be sited and designed to prevent impacts which would significantly degrade areas adjacent to the habitats. The City and the applicant shall jointly develop an appropriate program to evaluate the adequacy of any mitigation measures imposed.

(b) When applicable, require as a condition of permit approval, the restoration of damaged habitat(s) when, in the judgment of the Planning Director, restoration is partially or wholly feasible.

3-7 Definition of Riparian Corridors

(a) Define riparian corridors by the "limit of riparian vegetation" (i.e. a line determined by the association of plant and animal species normally found near streams, lakes, and other bodies of fresh water: red alder, jaumea, pickleweed, big leaf maple, narrowleaf cattail, arroyo willow, broadleaf cattail, horsetail, creek dogwood, black cottonwood, and box elder). Such a corridor must contain at least a 50% cover of some combination of the plants listed.

3-8 Designation of Riparian Corridors

(a) Establish riparian corridors for all perennial and intermittent streams and lakes and other bodies of fresh water in the Coastal zone. Designate those corridors shown on the Habitat Areas and Water Resources Overlay and any other riparian area as sensitive habitats requiring protection, except for man-made irrigation ponds over 2,500 square feet surface area.

3-9 Permitted Uses in Riparian Corridors

(a) Within corridors, permit only the following uses: (1) education and research, (2) consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code, (3) fish and wildlife management activities, (4) trails and scenic overlooks on public land(s), and (5) necessary water supply projects.

(b) When no feasible or practicable alternative exists, permit the following uses: (1) stream-dependent aquaculture provided that non-stream-dependent facilities locate outside of corridor, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, (3) bridges when supports are not in significant conflict with corridor resources, (4) pipelines and storm water runoff facilities, (5) improvement, repair or maintenance of roadways or road crossings, (6) agricultural uses, provided no existing riparian vegetation is removed, and no soil is allowed to enter stream channels.

3-10 Performance Standard in Riparian Corridors

(a) Require development permitted in corridors to: (1) minimize removal of vegetation, (2) minimize land exposure during construction and use temporary vegetation or mulching to protect critical areas, (3) minimize erosion, sedimentation, and runoff by appropriately grading and replanting modified areas, (4) use only adapted native or non-invasive exotic plant species when replanting, (5) provide sufficient passage for native and anadromous fish as specified by the State Department of Fish and Game, (6) minimize adverse effects of waste water discharges and entrainment, (7) prevent depletion of groundwater supplies and substantial interference with surface and subsurface waterflows, (8) encourage waste water reclamation, (9) maintain natural vegetation buffer areas that protect riparian habitats, and (10) minimize alteration of natural streams.

3-11 Establishment of Buffer Zones

(a) On both sides of riparian corridors, from the "limit of riparian vegetation," extend buffer zones 50 feet outward for perennial streams and 30 feet outward for intermittent streams.

(b) Where no riparian vegetation exists along both sides of riparian corridors, extend buffer zones 50 feet from the bank edge for perennial streams and 30 feet from the midpoint of intermittent streams.

(c) Along lakes, ponds, and other wet areas, extend buffer zones 100 feet from the high water point, except for man-made ponds and reservoirs used for agricuItural purposes for which no buffer zone is designated.

3-12 Permitted Uses in Buffer Zones

(a) Within buffer zones, permit only the following uses: (1) uses permitted in riparian corridors, (2) structures on existing legal building sites, set back 20 feet from the limit of riparian vegetation, only if no feasible alternative exists, and only if no other building site on the parcel exists, (3) crop growing and grazing consistent with Policy 3.9, (4) timbering in "streamside corridors" as defined and controlled by State and County regulations for timber harvesting, and (5) no new parcels shall be created whose only building site is in the buffer area except for parcels created in compliance with Policies 3.3, 3.4, and 3.5 if consistent with existing development in the area and if building sites are set back 20 feet from the limit of riparian vegetation or if no vegetation 20 feet from the bank edge of a perennial and 20 feet from the midpoint of an intermittent stream.

3-13 Performance Standards in Buffer Zone

(a) Require uses permitted in buffer zones to: (1) minimize removal of vegetation, (2) conform to natural) topography to minimize erosion potential, (3) make provisions to

(i.e. catch basins) to keep runoff and sedimentation from exceeding pre-development levels, (4) replant where appropriate with native and non-invasive exotics, (5) prevent discharge of toxic substances, such as fertilizers and pesticides, into the riparian corridor, (6) remove vegetation in or adjacent to man-made agricultural ponds if the life of the pond is endangered, (7) allow dredging in or adjacent to man-made ponds if the San Mateo County Resource Conservation District certifies that siltation imperils continued use of the pond for agricultural water storage and supply.

3-22 Permitted Uses

(a) Permit only the following uses: (1) education and research, (2) hunting, fishing, pedestrian and equestrian trails that have no adverse impact on the species or its habitat, and (3) fish and wildlife management to restore damaged habitats and to protect and encourage the survival of rare and endangered species.

(b) If the critical habitat has been identified by the Federal Office of Endangered Species, permit only those uses deemed compatible by the U. S. Fish and Wildlife Service in accordance with the provisions of the Endangered Species Act of 1973, as amended.

3-24 Preservation of Critical Habitats

(a) Require preservation of all habitats or rare and endangered species using the policies of this Plan and other implementing ordinances of the City.

3-25 San Francisco Garter Snake

(a) Prevent any development where there is known to be a riparian location for the San Francisco garter snake with the following exception: (1) existing man-made impoundments smaller than 1/2 acre in surface, and (2) existing man-made impoundments greater than 1/2 acre in surface, providing mitigation measures are taken to prevent disruption of not more than one-half of the snake's known habitat in that location in accordance with recommendations from the State Department of Fish and Game.

(b) Require developers to make sufficiently detailed analyses of any construction which could impair the potential or existing migration routes of the San Francisco garter snake. Such analyses will determine appropriate mitigation measures to be taken to provide for appropriate migration corridors.

Policy 4-8:

No new permitted development shall cause or contribute to flood hazards.

Policy 4-9:

All development shall be designed and constructed to prevent increases in runoff that would erode natural drainage courses. Flows from graded areas shall be kept to an absolute minimum, not exceeding the normal rate of erosion and runoff from that of the undeveloped land. Storm water outfalls, gutters, and conduit discharge shall be dissipated.

Policy 7-10:

New development on upland slopes visible from Highway 1 and Highway 92 as indicated on the Visual Resources Overlay Map, shall not involve grading or building siting which results in a significant modification of the hillscape; where trees must be removed for building purposes, reforestation shall be provided as a part of any new development to maintain the forested appearance of the hillside. Structures shall be subordinate in appearance to the natural landform,

shall be designed to follow the natural contours of the landscape, and shall be sited so as not to intrude into the skyline as seen from public viewing places.

Policy 8-12:

The Urban/Rural Boundary shall be the City Limit boundary of the City of Half Moon Bay.

Policy 9-2:

The City shall monitor annually the rate of build-out in categories designated for development. If the rate of build-out exceeds the rate on which the estimates of development potential for Phase I and Phase II in the Plan are based, further permits for development or land divisions shall not be issued outside existing subdivisions until a revised estimate of development potential has been made. At that time the City shall establish a maximum number of development permits to be granted each year in accordance with expected rates of build-out and service capacities. No permit for development shall be issued unless a finding is made that such development can be served with water, sewer, schools, and road facilities, including such improvements as are provided with the development. (See Table 9.3)

Policy 9-4:

All new development, other than development on parcels designated Urban Reserve or Open Space Reserve on the Land Use Plan Map permitted while such designations are effective, shall have available water and sewer services and shall be accessed from a public street or shall have access over private streets to a public street. Prior to issuance of a development permit, the Planning Commission or City Council shall make the finding that adequate services and resources will be available to serve the proposed development upon its completion and that such development is located within and consistent with the policies applicable to such an area designated for development. The applicant shall assume full responsibility for costs incurred in the service extensions or improvements that are required as a result of the proposed project, or such share as shall be provided if such project would participate in an improvement or assessment district. Lack of available services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the Land Use Plan. (See Table 10.3).

Policy 10-4 (Public Works Capacity)

The City shall reserve public works capacity for land uses given priority in the Plan, in order to assure that all available public works capacity is not consumed by other development and control the rate of new development permitted in the City to avoid overloading of public works and services.

Policy 10-25 (Levels of Service)

The City will support the use of Level of Service C as the desired level of service on Highways 1 and 92, except during the peak two-hour commuting period and the ten-day average peak recreational hour when Level of Service E will be acceptable.

10.4.4 Transportation Issues

Highways 1 and 92 are the only roads connecting Half Moon Bay with the rest of the region. Highway 1 also serves as the key northsouth collector road, providing for local traffic

connections among neighborhoods and between them and the downtown commercial core. To a lesser extent, Highway 1 provides for local circulation in and around downtown.

Limited road capacity for movement into, out of, and within the City, has long been recognized as a problem and constraint on new development, as indicated in past studies and the former General Plan's Circulation Element.i The Coastal Act requires that limited road capacity not be consumed by new, non-priority development, at the expense of adequate service for priority uses, such as public recreation and visitor-serving commercial uses. The major issue involves potential conflict for transportation capacity between new residential development and reservation of adequate capacity for visitor travel to coastside beaches. The issue involves two components: commuter traffic and visitor traffic on Highways 1 and 92, and competition between local resident traffic and visitor traffic on local streets and Highway 1 (with some possible effect on Highway 92). In addition, the commuter-visitor traffic conflict issue is related to the Coastal Act policy that Highway 1 be limited to two lanes in rural areas, which could include portions of Highway 1 which link Half Moon Bay to San Francisco and other employment centers to the north. Therefore, the overall capacity of the existing transportation system to accommodate resident population growth must be considered.

§ 51201. **Definitions**

As used in this chapter, unless otherwise apparent from the context:

(c) "Prime agricultural land" means any of the following:

(1) All land which qualifies for rating as class I or class II in the Soil Conservation Service land use capability classifications.

(2) Land which qualifies for rating 80 through 100 in the Storie Index Rating.

(3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.

(4) Land planted with fruit-or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars ($200) per acre.

(5) Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars ($200) per acre for three of the previous five years.

Half Moon Bay LCP Implementation Ordinance Standards (Zoning Code Sections)

18.02.040 Definitions

Wetland: The definition of wetland as used and as may be periodically amended by the California Department of Fish and Game, the California Coastal Commission and the US Fish and Wildlife Service.

18.37.020 Visual Resources Areas. The Planning Director shall prepare and maintain maps of all designated Visual Resource Areas within the City, based upon the Visual Resources Overlay Map

contained in the City's Local Coastal Program Land Use Plan. Visual Resource Areas within the City are defined as follows: …

B. Upland Slopes. Scenic Hillsides which are visible from Highway One and Highway 92, as indicated on the Visual Resources Overlay Map. These areas occur include hillside areas above the 160 foot elevation contour line which are located:

1. East of the proposed Foothill Boulevard, comprising portions of Carter Hill and Dykstra Ranch properties.

2. South-east of Pilarcitos Creek and East of Arroyo Leon, comprising a portion of land designated as Open Space Reserve in the Land Use Plan.

3. East of the Sea Haven Subdivision, being a portion of the Gravance property designated Urban Reserve in the Land Use Plan.

4. East of the Nurseryman's Exchange properties and lower Hester-Miguel lands, comprising all of the upper Hester Miguel lands designated as Open Space Reserve in the Land Use Plan.

18.38.020 Coastal Resource Areas. The Planning Director shall prepare and maintain maps of all designated Coastal Resource Areas within the City. Coastal Resource Areas within the City are defined as follows:**…**

E. Wetlands. As defined by the US Fish and Wildlife Service, a wetland is an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mud flats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and man-made impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds, and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernally wet areas where the soils are not hydric.

…

18.38.030 Required Reports. Biological, Archeological and Geological Reports shall be required as set forth in Sections 18.38.035, 18.38.040, and 18.38.045. Required Reports shall be prepared by a qualified professional selected by the City in accordance with established City procedures. Unless otherwise specified herein, all required Biological, Archaeological, and Geological Reports shall be performed by a consultant selected by the City and paid for by the applicant.

A. Report Requirements. The following requirements apply to reports.

1. Reports shall identify significant impacts on identified Coastal Resources on the project site that would result from development of the proposed project

2. Reports shall recommend feasible measures to mitigate any significant impacts and to protect the identified coastal resource. The adequacy of these measures shall be evaluated under a program developed jointly by the applicant and the Planning Director. These measures may include, but are not limited to:

a. changes in development intensity;

b. siting of buildings, structures or paving; and

c. limitations on the timing and location of construction.

3. Reports shall contain a proposed monitoring and reporting program to ensure that development conditions imposed are adequately being carried out and that significant impacts on the coastal resources have not occurred.

4. Reports shall be reviewed by the City for consistency with this Title and with the California Environmental Quality Act.

5. Reports shall be completed to the satisfaction of the Planning Director prior to the determination that a required development permit application is considered complete.

B. Exceptions. The Planning Director may grant exceptions to the requirements of this Chapter if he or she finds that existing studies adequately fulfill the requirements of this Chapter, provided such studies were prepared by a qualified professional as a part of a previously Certified Final EIR in accordance with the provisions of this Chapter.

18.38.035 Biological Report.

A. When Required. The Planning Director shall require the applicant to submit a Biological Report, prior to development review, prepared by a qualified Biologist for any project located in or within 100 feet of any Sensitive Habitat Area, Riparian Corridor, Bluffs and Seacliff Areas, and any Wetland…

B. Report Contents. In addition to meeting the report requirements listed in Section 18.35.030, the Biological Report shall contain the following components:

1. Mapping of Coastal Resources. The Biological Report shall describe and map existing wild strawberry habitat on the site, existing sensitive habitats, riparian areas and wetlands located on or within 200 feet of the project site.

2. Description of Habitat Requirements.

a. For Rare and Endangered Species: a definition of the requirements of rare and endangered organisms, a discussion of animal predation and migration requirements, animal food, water, nesting or denning sites and reproduction, and the plant's life histories and soils, climate, and geographic requirements;

b. For Unique Species: a definition of the requirements of the unique organism; a discussion of animal food, water, nesting or denning sites and reproduction, predation, and migration requirements; and a description of the plants' life histories and soils, climate, and geographic requirements.

C. Distribution of Report. Any Biological Report prepared pursuant to this Title shall be distributed to the US Fish and Wildlife Service, the Army Corps of Engineers, the California Coastal Commission, the State Department of Fish and Game, the Regional Water Quality Control Board, and any other Federal or State agency with review authority over wetlands, riparian habitats, or water resources.

1. The Biological Report shall be transmitted to each agency with a request for comments from each agency with jurisdiction over the effected resource on the adequacy of the Report and any suggested mitigation measures deemed appropriate by the agency.

2. Included within the transmittal of the Biological Report to the various agencies shall be a request for comments to be transmitted to the Planning Director within 45 days of receiving the Report.

18.38.055 Environmental Impact Reports. At the discretion of the Planning Director, a project applicant may use the analysis contained in an Environmental Impact Report prepared under the California Environmental Quality Act or an Environmental Impact Statement prepared under the federal Environmental Policy Act to fulfill the requirements of this Title.

…

B. Use of Previously Prepared Environmental Impact Report. The Planning Director may accept the information and analysis contained in a previously prepared Environmental Impact Report required under the California Environmental Quality Act in lieu of a new Geological, Biological, or Archaeological Report if the Planning Director determines that:

3. In order to use any previously prepared Biological Report pursuant to this Section, the Biological Report must have been a part of a Certified Final EIR that was accepted as complete and adequate no more that one year prior to the date of submittal**.**

18.38.075 Riparian Corridors and Buffer Zones.

A. Permitted Uses. Except as may be specified in this Chapter, within Riparian Corridors, only the following uses shall be permitted:

1. Education and research;

2. Consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code;

3. Fish and wildlife management activities;

4. Trails and scenic overlooks on public land(s);

5. Necessary water supply projects;

6. Restoration of riparian vegetation.

B. No Alternative Permitted Uses. The following are permitted uses where no feasible or practical alternative exists:

1. Stream-dependent aquaculture provided that non-stream-dependent facilities locate outside of corridor;

2. Flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development;

3. Bridges when supports are not in significant conflict with corridor resources;

4. Pipelines and storm water runoff facilities;

5. Improvement, repair, or maintenance of roadways or road crossings;

6. Agricultural uses, provided no existing riparian vegetation is removed, and no soil is allowed to enter stream channels

C. Standards. Development shall be designed and constructed so as to ensure:

1. That the removal of vegetation is minimized;

2. That land exposure during construction is minimized and that temporary vegetation or mulching is used to protect critical areas;

3. That erosion, sedimentation, and runoff is minimized by appropriately grading and replanting modified areas;

4. That only adapted native or non-invasive exotic plant species are used for replanting;

5. That sufficient passage is provided for native and anadromous fish as specified by the State Department of Fish and Game;

6. That any adverse effects of waste water discharges and entrainment are minimized;

7. That any depletion of groundwater supplies and substantial interference with surface and subsurface water flows are prevented;

8. That waste water reclamation is encouraged;

9. That natural vegetation buffer areas which protect riparian habitats are maintained;

10. That any alteration of natural streams is minimized.

D. Riparian Buffer Zone. The Riparian Buffer Zone is defined as:

1. land on both sides of riparian corridors which extends from the "limit of riparian vegetation" 50 feet outward for perennial streams and 30 feet outward for intermittent streams;

2. land along both sides of riparian corridors which extends 50 feet from the bank edge for perennial streams and 30 feet from the midpoint of intermittent streams, where no riparian vegetation exists.

E. Permitted Uses within Riparian Buffer Zones include:

1. Uses permitted in riparian corridors;

2. Crop growing and grazing, provided no existing riparian vegetation is removed and no soil is allowed to enter stream channels;

3. Timbering in "stream side corridors" as defined and controlled by State and County regulations for timber harvesting.

F. No Alternative Permitted Uses. The following are Permitted Uses within Riparian Buffer Zones where no feasible alternative exists:

1. The construction of new structures on existing legal building sites, set back 20 feet from the limit of riparian vegetation, only if no other building site on the parcel exists;

2. The creation of new parcels only if the only building sites available are those within in buffer area, if the proposed parcels are consistent with existing development in the area, and if the building sites are set back 20 feet from the limit of riparian vegetation, or if there is no vegetation, 20 feet from the bank edge of a perennial stream or 20 feet from the midpoint of an intermittent stream.

G. Development Standards within Riparian Buffer Zones. Development shall be designed and constructed so as to ensure:

1. That the removal of vegetation is minimized;

2. That development conforms to natural topography and that erosion potential is minimized;

3. That provisions have been made to (i.e. catch basins) keep runoff and sedimentation from exceeding pre-development levels;

4. That native and non-invasive exotic vegetation is used for replanting, where appropriate;

5. That any discharge of toxic substances, such as fertilizers and pesticides, into the riparian corridor is prevented;

6. That vegetation in or adjacent to man-made agricultural ponds is removed if the life of the pond is endangered;

7. That dredging in or adjacent to man-made ponds is allowed if the San Mateo County Resource Conservation District, or any similar or successor agency or entity, certifies that siltation imperils continued use of the pond for agricultural water storage and supply.

H. Findings for Development within Riparian Buffer Zones. The following Findings shall be supported by the contents of the required Biological Report:

1. That there are special circumstances or conditions affecting the property;

2. That the project is necessary for the proper design and function of some permitted or existing activity on the property;

3. That the project will not be detrimental to the public welfare or injurious to other property downstream or in the area in which the project is located;

4. That the project will not significantly reduce or adversely impact the sensitive habitat, or there is no feasible alternative which would be less damaging to the environment;

5. That the project is in accordance with the purpose of this Chapter and with the objectives of the L.C.P. Land Use Plan;

6. That development on a property which has its only building site located in the buffer area maintains a 20-foot buffer from the limit of riparian vegetation, or if no vegetation exists, a 20-foot buffer from the bank of a perennial stream and a 20-foot buffer from the midpoint of an intermittent stream.

18.38.080 Wetlands

A. Permitted Uses:

1. Education and research;

2. Passive recreation such as bird-watching;

3. Fish and wildlife management activities.

B. Permitted Uses with approval of a Use Permit:

1. Commercial mariculture where no alteration of the wetland is necessary;

2. Bridges;

3. Pipelines and storm water runoff facilities;

4. Improvement, repair or maintenance of roadways.

C. Standards. The Riparian Corridor Standards listed in this Chapter shall apply to Wetlands.

D. Wetlands Buffer Zone. The minimum buffer surrounding lakes, ponds, and marshes shall be 100 feet, measured from the high water point, except that no buffer is required for man-made ponds and reservoirs used for agricultural purposes.

E. Permitted Uses within Wetlands Buffer Zones. The Riparian Buffer Zone Uses listed in this Title shall apply to Wetlands Buffer Zones.

F. Permitted Uses within Wetlands Buffer Zones, where no feasible alternative exists. The Riparian Buffer Zone Uses listed under this Title shall apply to Wetlands Buffer Zones.

G. Development Standards within Wetlands Buffer Zones. The Riparian Buffer Development Standards listed under this Title shall apply to Wetlands Buffer Zones.

H. Findings for Development within Wetlands Buffer Zones. The following Findings shall be supported by the contents of the required Biologic Report:

1. That there are special circumstances or conditions affecting the property;

2. That the project is necessary for the proper design and function of some permitted or existing activity on the property;

3. That the project will not be detrimental to the public welfare or injurious to other property in the area in which the project is located;

4. That the project will not significantly reduce or adversely impact the sensitive habitat, or there is no feasible alternative which would be less damaging to the environment;

5. That the project is in accordance with the purpose of this Chapter and with the objectives of the L.C.P. Land Use Plan;

6. That development on a property, which has its only building site located in the buffer area, maintains a 20-foot buffer from the outer edge of any wetland.

18.38.085 Habitats for Rare and Endangered Species

A. **Rare and Endangered Species.** The potential exists for any of the following Rare and Endangered Species to be found within the San Mateo County Coastal Area and therefore within the City of Half Moon Bay.

1. Animals: the San Francisco Garter Snake, California Least Tern, California Black Rail, California Brown Pelican, San Bruno Elfin Butterfly, San Francisco Tree Lupine Moth, Guadalupe Fur Seal, Sea Otter, California Brackish Water Snail, Globose Dune Beetle.

3. Plants: Rare Plants known in San Mateo County are the Coast rock cress, Davy's bush lupine, Dolores campion, Gairdner's yampah, Hickman's cinquefoil, Montara manzanita, San Francisco wallflower, and Yellow meadow foam (botanical names are listed in the City's LCP/LUP).

B. Permitted Uses. In the event that a Biological Report indicates the existence of any of the above species in an area, the following uses are permitted.

1. Education and research.

2. Hunting, fishing, pedestrian and equestrian trails that have no adverse impact on the species or its habitat.

3. Fish and wildlife management to restore damaged habitats and to protect and encourage the survival of rare and endangered species.

C. **Permitted Uses within Critical Habitats.** Within the critical habitat as identified by the Federal Office of Endangered Species, permitted uses are those which are deemed compatible by the US Fish and Wildlife Service in accordance with the provisions of the Endangered Species Act of 1973, as amended.

D. Buffer Zones.The minimum buffer surrounding a habitat of a rare or endangered species shall be 50 feet.

E. Standards:

1. Animals: Specific requirements for each rare and endangered animal are listed in Chapter 3 of the Local Coastal Program Land Use Plan.

2. Plants: When no feasible alternative exists, development may be permitted on or within 50 feet of any rare plant population, if the site or a significant portion thereof shall be returned to a natural state to enable reestablishment of the plant, or a new site shall be made available for the plant to inhabit and, where feasible, the plant population shall be transplanted to that site.

F. Habitat Preservation. Rare and endangered species habitats shall be preserved according to the requirements of the specific Local Coastal Program Land Use Plan policies tailored to each of the identified rare and endangered species and LCP/LUP implementing ordinances.

18.38.090 Habitats for Unique Species.

B. Permitted Uses. Permitted uses include:

1. education and research;

2. hunting, fishing, pedestrian and equestrian trails that have no adverse impact on the species or its habitat; and

3. fish and wildlife management to the degree specified by existing governmental regulations.

California Environmental Quality Act (CEQA) and CEQA Guidelines

21080.5. Certified Regulatory Programs

(d) To qualify for certification pursuant to this section, a regulatory program shall require the utilization of an interdisciplinary approach that will ensure the integrated use of the natural and social sciences in decision making and shall meet all of the following criteria:

(2) The rules and regulations adopted by the administering agency for the regulatory program do all of the following:

(A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

15130. Discussion of Cumulative Impacts

(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided ~~of~~ for the effects attributable to the project alone. The discussion should be guided by standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and reasonably anticipated probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated is designed to evaluate regional or areawide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency;

1. When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

2. "Probable future projects" may be limited to those projects requiring an agency approval for an application which has been received at the time the notice of preparation is released, unless abandoned by the applicant; projects included in an adopted capital improvements program, general plan, regional transportation plan, or other similar plan; projects included in a summary of projections of projects (or development areas designated) in a general plan or a similar plan; projects anticipated as later phase of a previously approved project (e.g. a subdivision); or those public agency projects for which money has been budgeted.

3. Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

(2) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available; and

(3) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects of a proposed project.

15355. Cumulative Impacts

"Cumulative impacts" refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

(a) The individual effects may be changes resulting from a single project or a number of separate projects.

(b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.